MILWAUKEE RAILROAD AND ROCK ISLAND RAILROAD AMENDMENTS ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1879

TO AMEND THE MILWAUKEE RAILROAD RESTRUCTURING ACT AND THE ROCK ISLAND TRANSITION AND EMPLOYEE ASSISTANCE ACT TO FACILITATE THE PURCHASE OF LINES OF BANKRUPT CARRIERS TO PROVIDE FOR CONTINUED RAIL SERVICE AND FOR OTHER PURPOSES

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MILWAUKEE RAILROAD AND ROCK ISLAND RAILROAD AMENDMENTS ACT

TUESDAY, DECEMBER 8, 1981

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 9:05 a.m. in room 6226 of the Dirksen Senate Office Building; Hon. Nancy Landon Kassebaum presiding.

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. I think we'll go ahead and call this hearing to order.

This hearing is born out of a state of urgency, concern, confusion, and frustration. There will be testimony on behalf of S. 1879, legislation which developed from all of that same concern and frustration. The Rock Island Railroad has been the economic lifeline of the Midwest. For those of us who have wrestled with this problem, some for a longer time than others, and some for a brief but intense period of time, we're hopeful that positive results will stem from this hearing.

I would just like briefly to give a bit of background before we proceed. The Rock Island Railroad has been in bankruptcy proceedings since 1975. Almost 2 years ago, with thousands of miles of the Rock Island system facing the approaching expiration of the Interstate Commerce Commission's directed service order, Congress passed the Rock Island Transition Act. The primary purpose of this legislation was to expedite the transfer of essential rail lines to interested persons, including carriers and shippers, who would be willing to continue rail service.

Unfortunately, the goal of swiftly transferring these lines has been blocked time and time again. Potential purchasers have been frustrated in their efforts to negotiate transfer agreements with the estate. Each side believes the other is not negotiating in good faith, and the result has been a refusal to cooperate. Court challenges to the trustee's actions have also been unsuccessful. No one has benefited from this frustrating stalemate; shippers fear loss of service, creditors are not being paid, and rail employees, not already laid off, fear for the continuation of their jobs.

The legislation I have introduced is, I believe, essential to break this unproductive deadlock in order to facilitate the purchase of these lines and to guarantee continued rail service. This legislation would vest authority in the Interstate Commerce Commission to determine if a financially responsible person has made a bona fide offer to purchase at a reasonable price. A purchaser would only submit an application to the Commission after it has been rejected by the trustee. The legislation establishes time frames and procedures whereby the Commission must render its decision on what constitutes a reasonable price. It has been established in the legislation that a reasonable price shall not be less than net liquidation value and that purchasers must be able to provide service over the line for not less than 2 years.

The Commission's decision is then subject to a review by the bankruptcy court. The court shall approve the sale if the purchase price established by the Commission is not less than the constitutional minimum. I believe that public interest dictates that a binding expedited transfer process be instituted--one that will insure that the tender of bona fide offers for purchase will result in a sale and one that will serve the essential transporation needs of the public while cognizant of constitutional considerations.

I believe this legislation protects the interests of all parties concerned, while insuring that the public interest is served in a most expeditious fashion.

[The bill follows:]

II

Calendar No. 415

97th CONGRESS
1st Session

S. 1879

[Report No. 97-299]

To amend the Milwaukee Railroad Restructuring Act and the Rock Island Transition and Employee Assistance Act to facilitate the purchase of lines of bankrupt carriers to provide for continued rail service and for other purposes.

IN THE SENATE OF THE UNITED STATES

November 20 (legislative day, November 2), 1981

Mrs. Kassebaum (for herself, Mr. Dole, Mr. Durenberger, Mr. Grassley, Mr. Bumpers, Mr. Exon, Mr. Packwood Mr. Pressler, Mr. Boren, Mr. Jepsen, Mr. Danforth, Mr. Armstrong, and Mr. Cannon) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

December 14 (legislative day, November 30), 1981

Reported by Mr. Packwood, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Milwaukee Railroad Restructuring Act and the Rock Island Transition and Employee Assistance Act to facilitate the purchase of lines of bankrupt carriers to provide for continued rail service and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Milwaukee Railroad and Rock Island Railroad Amendments Act".~~

~~PURPOSE OF THE ACT~~

~~SEC. 2. This Act is part of the continuing effort by Congress to assure service over the lines of bankrupt carriers in instances where rail carriers are willing to provide service over such lines and financially responsible persons are willing to purchase the lines for continued rail operations.~~

~~CONGRESSIONAL FINDINGS~~

~~SEC. 3. The Congress hereby finds that it is in the public interest (1) to clarify the Commission's existing authority to consider purchase applications and to issue orders involving temporary authority; (2) to establish procedures to facilitate and expedite the sale of lines of bankrupt carriers to financially responsible persons in instances where the line has been abandoned by the bankrupt carrier or service is not being provided by such carrier, and the prospective purchaser seeks to provide rail service over such line or lines; and (3) that procedures set forth herein will provide a practicable means for preserving rail service, thus benefiting shippers, employees, and the economies of the States in which such bankrupt railroad or railroads operate, while at the same time providing safeguards to protect the interest of the estate of~~

~~the bankrupt by requiring payment of a reasonable purchase price.~~

~~MILWAUKEE RAILROAD RESTRUCTURING ACT AMENDMENTS~~

~~SEC. 4. The Milwaukee Railroad Restructuring Act (49 U.S.C. 901) is amended as follows:~~

~~(1) Insert at the end of section 2, the following new subparagraph:~~

~~"(7) For the purpose of section 17, a 'financially responsible person' means a person who is capable of paying the purchase price of the line proposed to be acquired and is able to cover expenses associated with providing service over the line for a period of not less than two years.".~~

~~(2) Insert the following new subsection as section 17(b)(2) and renumber section 17(b)(3) as section 17(b)(4).~~

~~"(A) Any financially responsible person seeking to purchase (1) a line or lines of a bankrupt railroad no longer operating as a common carrier or (2) a line or lines of a bankrupt carrier over which no service is being provided by such carrier, may submit an application for purchase of such line or lines with the Commission if it intends to provide rail operations over the line and~~

~~has made a bona fide offer to purchase at a price asserted to be reasonable which has been rejected by the trustee. A copy of any application filed pursuant to this subparagraph shall be simultaneously filed with the court.~~

~~“(B) If the Commission finds, within thirty days after filing of an application under subparagraph (A) that a financially responsible person has made a bona fide offer to purchase a line or lines of a bankrupt railroad, as described in subparagraph (A), for a reasonable price, and that such offer has been rejected by the trustee, the parties shall have sixty days to agree on the amount of compensation for sale or transfer of the considered line or lines. If agreement is reached, a request for approval of the sale shall be filed with the Commission and the court.~~

~~“(C) If the parties are unable to agree on the amount of compensation within the period specified in subparagraph (B), either party may, after at least sixty days but within ninety days, request the Commission to determine a reasonable purchase price for the considered line or lines. For the purposes of this subparagraph, a reasonable price shall be not less than net liquidation value~~

~~of such line or lines as determined by the Commission. The Commission shall render its decision within sixty days. The decision of the Commission shall be binding upon both parties, subject to court review as provided in subparagraph (E), except that the person who has offered to purchase the line may withdraw the offer within ten days of the Commission's decision.~~

~~"(D) The Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.~~

~~"(E) The Commission shall, within fifteen days of decision, transmit to the court any order or decision under this subsection, unless the offer is withdrawn as provided in subsection (C). Notwithstanding any other provision of law, the court shall approve the sale so long as the purchase price is not less than required as a constitutional minimum for the line or lines.~~

~~"(F) No purchaser of a line sold under this subsection may transfer or discontinue service on such line prior to the end of the second year after consummation of the purchase.~~

~~"(G) The Commission shall, within forty-five days of the effective date of this subsection, prescribe any regulations and procedures which may be necessary to carry out the provisions of the subsection.".~~

~~ROCK ISLAND TRANSITION AND EMPLOYEE ASSISTANCE ACT AMENDMENTS~~

~~SEC. 5. The Rock Island Transition and Employee Assistance Act (45 U.S.C. 1001) is amended as follows:~~

~~(1) Insert at the end of section 122(a) the following new sentence: "The Commission's authority to issue orders under this section shall continue until a plan of reorganization or liquidation is approved by the Commission and the court.".~~

That this Act may be cited as the "Milwaukee Railroad and Rock Island Railroad Amendments Act".

PURPOSE

SEC. 2. It is the purpose of this Act to continue the effort by Congress to assure service over the lines of bankrupt rail carriers in instances where rail carriers are willing to provide service over such lines and financially responsible persons are willing to purchase the lines for continued rail operations.

FINDINGS

SEC. 3. The Congress hereby finds that it is in the public interest—

(1) to clarify the Commission's existing authority to consider purchase applications and to issue orders involving temporary authority;

(2) to establish procedures to facilitate and expedite the sale of lines of bankrupt carriers to financially responsible persons in instances where the line has been abandoned by the bankrupt carrier or service is not being provided by such carrier, and the prospective purchaser seeks to provide rail service over such line or lines; and

(3) that procedures set forth in this Act be utilized to provide a practicable means for preserving rail service, thus benefiting shippers, employees, and the economies of the States in which any such bankrupt rail carrier operates, while at the same time providing safeguards to protect the interest of the estate of the bankrupt rail carrier by requiring payment of a reasonable purchase price.

AMENDMENTS TO THE MILWAUKEE RAILROAD RESTRUCTURING ACT

SEC. 4. Section 17(b) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 915(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

"(3)(A) Any financially responsible person seeking to purchase a line or lines of a bankrupt rail carrier no longer operating as a common carrier, or a line or lines of a bankrupt carrier over which no service is being provided by such carrier, may submit to the Commission an application for purchase of such line or lines if it (i) intends to provide rail operations over the line, (ii) has made a bona fide offer to purchase at a price asserted to be reasonable, and (iii) such offer has been rejected by the trustee. A copy of any application submitted pursuant to this subparagraph shall be simultaneously filed with the bankruptcy court.

"(B) The Commission shall determine, within 15 days after the filing of an application under subparagraph (A) of this paragraph, whether a financially responsible person has made a bona fide offer to purchase a line or lines of a bankrupt rail carrier, as described in subpara-

graph (A) of this paragraph, and whether such offer has been rejected by the trustee.

"(C) If the parties at any time agree on the amount of compensation for the purchase of a line or lines of a bankrupt rail carrier, a request for approval of the sale shall be filed with the Commission and with the bankruptcy court. If the parties are unable to agree on the amount of compensation, either party may request, within 30 days after the determination of the Commission under subparagraph (B) of this paragraph, that the Commission determine a reasonable purchase price for the line or lines. For the purposes of this subparagraph, a reasonable price shall be not less than net liquidation value of such line or lines, as determined by the Commission. The Commission shall make its determination within 60 days of the request by a party under this subparagraph. The determination of the Commission shall be binding upon both parties, subject to court review as provided in subparagraph (E) of this paragraph, except that the person who has offered to purchase the line or lines may withdraw the offer within 10 days of the Commission's determination.

"(D) The Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line or lines subject to a sale under this paragraph.

"(E) The Commission shall, within 15 days of a determination under subparagraph (C) of this paragraph, transmit to the bankruptcy court such determination, unless the offer is withdrawn as provided in subparagraph (C) of this paragraph. Notwithstanding any other provision of law, the bankruptcy court shall approve the sale within 60 days so long as the purchase price is not less than that required as a constitutional minimum for the line or lines.

"(F) No purchaser of a line or lines sold under this paragraph may discontinue service on or transfer such line or lines prior to the end of the 4th year after consummation of the purchase.

"(G) The Commission shall, within 45 days after the date of enactment of the Milwaukee Railroad and Rock Island Railroad Amendments Act, prescribe any regulations and procedures which may be necessary to carry out the provisions of this paragraph.

"(H) For the purposes of this paragraph, a 'financially responsible person' means a person, a State, or a political subdivision thereof (or combination thereof) who is capable of paying the price of a line or lines proposed to be purchased and of covering expenses associated with providing service over the line or lines for a period of not less than 4 years after the commencement of such service.

"(I) The provisions of this paragraph shall apply only to the Rock Island Railroad, as defined in section 103(5) of the Rock Island Transition and Employee Assistance Act (45 U.S.C. 1003(5)).".

ROCK ISLAND TRANSITION AND EMPLOYEE ASSISTANCE ACT AMENDMENTS

SEC. 5. Section 122(a) of the Rock Island Transition and Employee Assistance Act (45 U.S.C. 1017(a)) is amended by inserting at the end thereof the following: "The Commission shall have authority to authorize continued rail service under this section over the lines of the Rock Island Railroad, until the disposition of the properties of the estate of the Rock Island Railroad.".

CONTRACT RATES

SEC. 6. Section 10713(k)(1) of title 49, United States Code, is amended by striking "and paper)" and inserting in lieu thereof ", but not including wood pulp, wood chips, pulpwood, or paper)".

SEPARABILITY

SEC. 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.".

Senator KASSEBAUM. It's a great pleasure to welcome this morning one of our favorite congressmen, Congressman Pat Roberts from the big First District of Kansas.

STATEMENT OF HON. PAT ROBERTS, U.S. REPRESENTATIVE FROM KANSAS

Mr. ROBERTS. I want to start by saying that I appreciate this opportunity to address you and to make this statement for the record to the committee. I think the record should reflect the leadership that you have shown in introducing this legislation and the leadership that you have shown all throughout this whole important subject. And I want to say to you, as my Senator and as a constituent of yours and speaking in behalf of all of the folks in the first district to say how much we really appreciate your leadership and your real initiative in introducing this legislation. I will introduce this same bill as of today in the House of Representatives, along with numerous cosponsors, and I would like with your permission, Madam Chairman, to simply paraphrase from my statement and ask that you include the full statement in the record, if that is OK.

Senator KASSEBAUM. It will be done.

Mr. ROBERTS. I would like to first stress that adequate transportation in our rural areas is very crucial to the economic stability, not only of Kansas and the high plains, but of our entire country. I'm going to be a little parochial here and talk about the big first district, my 57 counties, in that we produce normally in every crop year more wheat than any State in the Nation. We didn't this last year, because we had a freeze, but I'm sure we'll get back to No. 1 very quickly.

The movement of this wheat at harvest time and throughout the year to export markets is vital to the economy of the entire Nation. Railroads do continue to be one of the most efficient, if not the most efficient, methods of shipping this kind of a commodity. In the United States we export nearly two-thirds of our wheat crop. The percentage of the Kansas wheat crop sold in the export market exceeds our national average. Much of our wheat crop moves into international channels via the Gulf of Mexico. In 1977, 55 percent of the wheat shipped from the terminal elevators and 30 percent of wheat from country elevators in Kansas went to the gulf.

To date, the most cost efficient method of moving wheat to the gulf is by rail on the Rock Island line now being operated by the Oklahoma, Kansas & Texas Railroad. A recent study by several professors of Kansas State University shows that the rate for rail shipment is 31 percent lower than the truck rate to the gulf and 16 percent lower than the truck/barge rate also to the gulf. For example, in October of this year, the combined freight rate from Oakley, Kans., which is my district, to Fort Worth, Tex., was approximately 76.2 cents per bushel on the OKT Railroad.

If our producers did not have this rail service, the cost of shipping their grain would have increased to 100.8 cents per bushel, assuming they could get this kind of transportation. That's an additional 24.6 cents per bushel that comes right out of the farmer's pocket.

And I might add, Madam Chairman, as you are very much aware, we're in the midst of a price and cash flow and credit—well, it's a real crisis in farm country. This kind of added cost would spell the difference, I think, in many cases, to hasten bankruptcies and to really hasten the demise of many family farm operations.

In short, the abandonment of the Rock Island line would be a severe economic blow to farmers, elevator operators and the main streets throughout our entire Grain Belt. The additional cost of shipping the grain through alternate transportation is a price we simply cannot afford.

I will skip on in my statement to make several other points.

And in regard to this legislation, in recent years, the Federal Government and the courts have virtually abandoned the rail system in this Nation. Those are pretty harsh words, and I intend them to be. This direction was taken on the mistaken notion that there is no public interest in maintaining railroad service to our small rural communities. The Staggers Rail Act of 1980 was passed largely on the premise that there was not a sufficient public interest to justify the regulation of the railroads by the Federal Government. In some areas, such as ratesetting, I think this is probably true, but in providing service to rural areas, there is sufficient public interest to warrant the involvement of the Federal Government and that's why we are pursuing this legislation, in my view.

It's been estimated by the Interstate Commerce Commission that the loss of the Rock Island Rail lines will add between 20 and 30 cents per bushel to the cost of shipping grain to the gulf. If we use 1977 figures, this translates into a $50 million increase for farmers to market their grain in the gulf export channel. These are alarming figures. It's even more alarming when we consider that they don't take into account any other State except Kansas, and they also represent the income loss from only one commodity. That's just wheat. If you add up all the rest, I think you can clearly perceive that this is in our national interest.

Clearly, the public interest of our citizens in the Midwest demands that we settle the dispute between the trustee and a bona fide purchaser. What is needed, in my view, in this case and in future cases that may arise, is a disinterested third party, the ICC, to buffer demands of the trustee on the one hand and the needs of the purchasers on the other.

This legislation we're discussing today would provide the mechanism to do this. This legislation simply clarifies the duties of action of the ICC—of the action the ICC could take in the transfer of ownership of the railroads. In the case of Rock Island, bona fide purchasers of the line's equipment and tracks have been frustrated in their attempts to negotiate with the trustee.

Let me emphasize, the real losers in this battle of wills is not the trustee or the purchasers, but they are the farmers and the consumers who are going unserved. The abandonment of this line will force numerous captive shippers to turn to alternate methods of shipping, with some needing as many as 11 semitrucks each day to move their grain to the gulf.

I think, Madam Chairman, in short, the operation of the Rock Island line by another railroad is of extreme importance. This legislation is vital to resolve the current impasse, I believe, between the trustees of the Rock Island and the OKT.

And I thank you, Madam Chairman, for this opportunity to present my statement. We have several subcommittee hearings going on right now, Madam Chairman. As you know, we're in a farm bill conference, so with that, I ask permission to take leave. And I thank you.

Senator KASSEBAUM. Thank you very much. I appreciate your introducing this legislation on the House side. This has the support, as you say, of a number of cosponsors on your side and on this side, and certainly from all of the Kansas delegation. Thank you for taking the time to come over to present your testimony.

Senator Dole, who has been working hard on the farm bill has just come in. I read in the paper this morning that the farm bill is still in negotiation.

Mr. ROBERTS. Speaking on the House side, I think I will defer to my senior Senator. He's had the chips; we haven't.

[The statement follows:]

STATEMENT OF HON. PAT ROBERTS, U.S. REPRESENTATIVE FROM KANSAS

Mr. Chairman: Let me begin by expressing my appreciation for the opportunity to address you and your distinguished colleagues this morning on one of the most pressing issues facing the rural communities of our nation's breadbasket.

Adequate transportation in our rural areas is crucial to the economic stability of our country. For example, the Big First District of Kansas produces more wheat in normal crop years than any other state in the nation. The movement of this wheat in my 57 counties at harvest time and throughout the year to export markets is vital to the economy of the entire nation. Railroads continue to be one of the most efficient methods of shipping bulk commodities.

In the United States, we export nearly two-thirds of our wheat crop. The percentage of the Kansas wheat crop sold in the export market exceeds our national average. Much of our wheat crop moves into international channels via the Gulf of Mexico. In 1977, 55 percent of the wheat shipped from terminal elevators and 30 percent of wheat from country elevators in Kansas went to the Gulf.

To date, the most cost-efficient method of moving wheat to the Gulf is by rail on the Rock Island line now being operated by the Oklahoma-Kansas-Texas Railroad. A recent study by Professor Mike Babcock of Kansas State University shows that the rate for rail shipment is 31 percent lower than the truck rate to the Gulf and 16 percent lower than the truck-barge rate to the Gulf. For example, in October of this year, the combined freight rate from Oakley, Kansas to Fort Worth, Texas, was approximately 76.2 cents per bushel on the OKT Railroad.

If our producers did not have this rail service, the cost of shipping their grain would have increased to 100.8 cents per bushel, assuming that they could get alternative transportation. That additional 24.6 cents per bushel comes out of the farmer's pockets.

In short, the abandonment of the Rock Island would be a severe economic blow to the farmers, elevator operators and the main streets throughout the Midwestern grainbelt. The additional cost of shipping the grain through alternate transportation is a price we cannot afford.

The OKT has been operating the former Rock Island line since the railroad went into receivership in June, 1980. The volume of traffic on this line is substantial. More than 1,300 cars of grain were shipped out of Salina, Kansas, in one 70-day period recently. Even with this substantial volume of traffic, the OKT has lost $4.5 million in its 16 months of operation. Part of this loss can be attributed to startup costs that occurred in the first six months of operation. However, one of the largest cost factors has been the excessive track rental paid to the trustee of the bankrupt Rock Island Railroad.

In an effort to reduce the operating costs or losses, and continue to provide service to these shippers, the OKT has offered to purchase this portion of the Rock Island track for $45 million. However, the trustee has rejected this offer, claiming that the line is worth $82 million. While I appreciate the trustee's need and legal responsibility to get "top dollar" for the assets he has been given the responsibility to dispose of, I am extremely concerned about the shippers on the Rock Island Line who will be damaged if no acceptable solution to the problem is found. I believe that there is a substantial public interest that is being overlooked in the struggle for dollars.

In recent years, the Federal government and the courts have virtually abandoned the rail system in this nation. This direction was taken on the mistaken notion that there is no "public interest" in maintaining railroad service to rural communities. The Staggers Rail Act of 1980 was passed largely on the premise that there was not a sufficient public interest to justify the regulation of the railroads by the Federal government. In some areas such as rate setting, this certainly may be true. But, in providing service to rural areas, there is sufficient "public interest" to warrant the involvement of the Federal government. This is why we're pursuing this legislation.

The possible abandonment of the Rock Island Railroad lines has grave implications for our rural areas. In 1977, 291.4 million bushels of grain were shipped from Kansas country elevators. Eighty-seven million bushels of this were shipped directly to the Gulf of Mexico. The balance was shipped to terminal elevators (204 million bushels.) Of the 204 million bushels, 55 percent was also shipped to the Gulf. Or, another way, 199.2 million bushels were shipped to the Gulf or approximately 58 percent of the Kansas wheat crop.

It has been estimated by the Interstate Commerce Commission that the loss of the Rock Island rail lines will add between 20 and 30 cents per bushel to the cost of shipping grain to the Gulf. If we use 1977 figures, this translates into a $50 million increase for farmers to market their grain in the Gulf export channel.

These are alarming figures. It's even more alarming when we consider that they do not take into account any other state besides Kansas and they also represent the income loss for only one commodity: wheat. Clearly, the public interest of our citizens in the Midwest demands that we settle the dispute between the trustee and a bona fide purchaser.

What is needed in this case and future cases that may arise is a disinterested third party, the ICC, to buffer demands of the trustee on one hand and needs of prospective purchasers on the other.

The legislation we're discussing today would provide the mechanism to do this. This legislation simply clarifies the duties and parameters of action the ICC can take in the transfer of ownership of railroads.

In the case of the Rock Island, bona fide purchasers of the line's equipment and tracks have been frustrated in their attempts to negotiate with the trustee. The real losers in this battle of wills is not the trustee or the purchasers, but are the farmers and consumers who are going unserved.

The abandonment of this line will force numerous captive shippers to turn to alternate methods of shipping, with some needing as many as eleven semi-trucks each day to move their grain to the Gulf. In short, the operation of the Rock Island line by another railroad is of extreme importance. This legislation is vital to resolve the current impasse between the trustee of the Rock Island and the OKT.

Senator KASSEBAUM. Thank you very much.

Bob?

We very much appreciate your taking time to testify because I realize that the farm bill is of upmost concern at this particular moment.

STATEMENT OF HON. BOB DOLE, U.S. SENATOR FROM KANSAS

Senator DOLE. The farm bill has been in conference longer than we've had trouble with the Rock, I think, but not quite. I would just say—since somebody raised the question, we are going to be in conference today on the farm bill. Whether or not we have a farm bill depends on the House Members at this point. They don't want a farm bill, there won't be a farm bill.

Well, let me just say I appreciate very much, and I know you have a number of outstanding witnesses and you've probably been waiting. I'll take just a minute or two. I will ask that my statement be made a part of the record.

I am pleased to have heard part of Congressman Pat Roberts' statement. I am very pleased to join with you, Senator Kassebaum, in your efforts and I think the speedy hearings on the bill that's been introduced by yourself, myself, and other Members of our delegation and other Members indicates that we're serious about what we hope to do. And I would hope that this hearing will move quickly, as I know it will; that we can report legislation and act as quickly as possible. I'm not certain we can do it before this session ends this year, but there is always that chance.

Without going through the history of the problem, let me indicate that like others that I have examined the consequences of further abandonment of rail service, and that examination—I think anybody could take a look at what happens. It is a vital element to our economic well-being, as Pat Roberts suggests, in that it affects primarily consumers, producers, and small communities. And I say that maybe it's time that we're still grappling with the farm bill because they're talking again about agriculture, rural America. But it comes as no surprise to most everyone here that Kansas and other Midwestern States produce a large volume of grain and agriculture commodities. They are produced by real, live farmers and farm families and real people. They work endless hours to help satisfy the appetites of those who like to eat. And these real, live people have naturally located themselves over the years in those areas where there are viable means of transporting the fruits of their labor.

In the evolution of our systems of transportation, rail service has been made increasingly available until relatively recently and such dependence on that form of transportation by the farmer and the smalltown merchant located on or near those lines has increased. Of course, the Government has, over the course of time, recognized and fostered the great role that rail service has grown to play in our system of transportation.

Now, I think that the consequences, if in fact we continue deterioration in rail service and more abandonment, the consequences are probably fairly obvious as far as farmers, businessmen, and others along the line. They're going to have to find other forms of moving their products, more expensive forms. They're not entirely satisfactory, primarily because of high transportation rates that would result from trucking or any other mode they might be able to find. And that's about the only other mode we can find in some of the landlocked areas.

I know enough about farmers and agriculture markets, having served on the Ag Committee staff for about 21 years. It is certainly clear to me that the effects of increased transportation costs resulting from abandonment of rail service would be devastating. It's always most devastating to the farmer. I have some of the same figures that Pat Roberts has furnished for the record, so I won't go into that. But I just believe that what we are trying to accomplish with the legislation is to establish procedure, facilitate the purchase of lines by willing and able carriers and shippers so that continued rail service can be provided.

I guess it's—I could rail out against the trustee, and I guess sometimes he's been more than arbitrary. But I believe this legislation is necessary because of the trustee and because he was appointed by a judge, his former law partner, has unilaterally decided that he has a license to disregard the substantial public interest that is involved. He has created a situation where there is no incentive for him to sell the assets of the estate and has stated publicly that he is willing to tear up significant segments of railroad track in order to sell it on the open steel market.

This he threatens to do despite the fact that there are shippers and carriers that are ready, willing, and able to provide continued rail service. The trustee will undoubtedly claim the Government has no business in all of this. He'll say it's a matter of two parties attempting to negotiate a private contract with each other. In general principle, in most cases, I would certainly agree with that concept. But this is not an ordinary situation and this Senator, the presiding Senator and others will not sit idly by while the trustee in bankruptcy, acting in disregard for the public interest, threatens to close down rail operations and destroy the fragile grain markets upon which farmers must rely.

The public has not defaulted. It is the Rock Island which has defaulted. The public remains located along these lines waiting to be served. It's willing to pay a fair price for such service.

So I just suggest that we must be very careful to avoid a constitutionally prohibited taking of the trustee's property without just compensation. The judge has stated the interests of the estate cannot be subordinated to the interests of the public; that there is no conceivable reason that these interests cannot be viewed as being in tandem.

So, in summary, I would only conclude, no doubt about it, continued rail service is in the public interest. Continued rail service we're speaking about today is not only in the public interest, it's a vital necessity. If, in fact, we expect the farmers of small towns to survive in Kansas, Nebraska, and other rural areas, we're going to have to insist that we provide some way for them to move their goods. As I view it, the bill introduced is a permissible amendment to the previous legislative scheme, and I would hope, as I've said earlier, that we can move very quickly on the legislation.

Again, I thank the chairman of the committee and Senator Exon for his interest, his assistance.

Senator **Kassebaum**. Thank you very much, Bob, for your interest and assistance. As the senior Senator from Kansas you have lent great support to these endeavors to find the best solution. That's why I am particularly appreciative of the different parties' willingness to participate and come together today. Hopefully, out of frustration and urgency, we will find the right solution.

Senator **Dole**. Thank you.

[The statement follows:]

Statement of Hon. Bob Dole, U.S. Senator From Kansas

Senator Kassebaum, may I say to you and the members of the committee that it is a pleasure to be here today to testify in support of S. 1879, a bill which I cosponsored upon its introduction in the Senate on November 20. I applaud the committee in proceeding to consideration of this bill in a timely fashion. This Senator will do everything possible to bring about a speedy resolution of the problems that we have been faced with for too many years now in the Rock Island controversy.

As everyone in this room knows, the Rock Island Railroad commenced bankruptcy proceedings in March of 1975, shortly after President Ford took office. Since that time, progress on the Rock Island situation has been marked by legal and political maneuvering, sproadic confusion and for me, constant frustration. My frustration over the inability of responsible parties to close this chapter in our history of rail service has reached new heights in recent weeks.

It has become clear to me that the passage of time has distorted focus away from some very fundamental questions. This Senator suggests to the members of this committee as well as the players in this protracted game—and it has become one big game—that we are talking about the simple question of whether there will be continued rail service throughout the agriculturally productive heartland of America.

Let me tell you that I have examined the consequences of further abandonments of rail service. That examination has led me to believe very strongly that further rail service is a vital element of our economic well-being.

It will come as no surprise to most of you that Kansas and other Midwestern States produce a large volume of grain and other agricultural commodities. These commodities are produced by real live farmers who toil endless hours in order to satiate the appetities of those of us at home and abroad. These real live people have naturally located themselves over the years in those areas where there are viable means of transporting the fruits of their labor to the relevant markets. In the evolution of our systems of transportation, rail service has been made increasingly available until relatively recently and, as such, dependence on that form of transportation by the farmer and the small town merchant who located on or near those lines has increased. The Government has, over the course of time, recognized and fostered the great role that rail service has grown to play in our system of transportation.

Now, let's review for a moment the unavoidable consequences of the abandonment of rail service along routes where farmers, businessmen and markets of all type have come to rely on that service. Producers that have previously moved their products by rail are forced to rely on trucking as an alternative. Unfortunatley that isn't an entirely satisfactory solution for several reasons, most notably due to the higher transportation rates that inevitably result with the use of trucking.

I think I can say that I know something about farmers and agricultural markets after having served for 21 years on either a House or Senate agricultural committee. It is certainly clear to me that the effects of increased transportation costs resulting from abandonment of rail service would be devastating.

The Department of Agriculture has furnished figures which indicate that there are some 80 elevators and 46 million bushels of grain being held captive to the fate of the Rock Island. Figures indicate that the loss of rail service will immediately result in increased transportation costs of 25 percent to 35 percent. Shippers in the Salina, Kansas area have indicated that their price of shipping wheat or milo to the gulf on the OKT Railroad was 64.8 cents per bushel from Sylvan Grove, Kansas, and 76.2 cents per bushel from Oakley, Kansas. With the OKT not operating at Salina the rate is 82.8 cents per bushel from Sylvan Grove and 100.8 cents per bushel from Oakley. This is an increase of 18 cents per bushel from Sylvan Grove—a 25 percent increase—and of 24.6 cents per bushel from Oakley—a 31 percent increase.

These increases are immediately borne by the producer, as we're talking about unsold grain. The increases will be ultimatley passed on to the consumer, if that is possible. I suggest, however, that the market may not be able to bear price increases of such magnitude. Because of that, it is not an exaggeration to say that by allowing further abandonment of railroads in the Midwest, we are only making it more difficult, if not impossible, for the farmer to earn his livelihood.

Increased costs are not the only effect of rail abandonments. Some commodities, due to unique physical characteristics or because of marketing characteristics, will not be able to be moved at all. Furthermore, movement of those commodities capable of being moved by truck will result in further deterioration of our Nation's highways and more inefficient use of our limited supply of fuels. Secondary reverberations will be felt throughout the economy.

Having established that the public at large would be better served by having continued rail service, let's examine the costs involved in making that service possible. It's important to note that we are not asking the Government to step in and run the railroad whatever the cost may be. We're not for that matter asking that money be appropriated to bridge whatever gap may still exist as a result of failed negotiations.

All we are trying to accomplish with S. 1879 is to establish a procedure to facilitate the purchase of lines by willing and able carriers or shippers so that continued rail service can be provided. This legislation is necessary because the trustee in bankruptcy, appointed by the judge—his former law partner—has unilaterally decided that he has license to disregard the substantial public interest that is involved. He has created a situation where there is no incentive for him to sell the assets of the estate and has stated publicly his willingness to tear up significant segments of railroad track in order to sell it on the open steel market. And this he threatens to do despite the fact that there are shippers and carriers that are ready, willing and able to provide continued rail service.

The trustee will undoubtedly claim that the Government has no business in all of this. He'll say that it's a matter of two parties attempting to negotiate a private contract with each other. In general principle and in most instances this Senator would wholeheartedly endorse that concept. But this is not an ordinary situation, and this Senator will not sit idly by while the trustee in bankruptcy, acting in callous disregard for the public interest, threatens to close down rail operations and destroy the fragile grain markets upon which farmers must rely.

The public has not defaulted; it is the Rock Island which has defaulted. The public remains located along these lines, waiting to be served, willing to pay a fair price for such service.

This Senator recognizes that we must be very careful to avoid a constitutionally prohibited taking of the trustee's property without just compensation. The judge has stated that the interest of the estate can not be subordinated to the interest of the public. But there is no conceivable reason that these interests can't be viewed as being in tandem. As long as the property is sold for amounts equal to or greater than the amounts for which it would be sole as scrap, it seems to this Senator that we are serving the interests of all parties. S. 1879 guarantees that the trustee receive for the property the constitutionally required minimum.

I will leave it to others who have been directly involved in the purchase or rental negotiations to give specific evidence of the inability to negotiate contracts without some involvement on the part of the ICC. Jim Smith, president of the OKT Rail Users Association, and Huck Boyd, chairman of the Mid-States Port Authority, are both able to testify about their unsuccessful negotiations.

In summary, I would simply like to say this: Continued rail service is clearly in the public interest. This Senator will support any constitutionally permissible action to insure that continued service. S. 1879 is a perfectly permissible amendment to the previous legislative scheme. It simply provides that, in the event that the trustee and interested purchasers are not able to successfully negotiate a price, the ICC can establish a price upon application of the interested purchaser. While in one sense the bill creates another layer of review, that level is occupied by the ICC, a neutral body more equipped to decide a fair price than any other body that can be imagined. Having strengthened the previous legislative scheme by providing a means to resolve the inevitable impasse, this bill deserves swift passage into law.

Senator **Kassebaum**. Thank you. Good luck on the farm bill.

Senator **Exon**. Mr. Dole, thank you for coming.

Senator **Kassebaum**. Mr. Exon?

Senator **Exon**. Thank you, Madam Chairman.

First, I am very pleased to be a cosponsor of the legislation that has been introduced by the junior Senator from Kansas. I thank the senior Senator for his excellent testimony. I do hope, Madam Chairman, that in light of the Rock Island difficulties and the firm and unrealistic position being taken, and the lack of cooperation, the bill we're holding hearings on here today would be helpful to those smaller communities and farmers being affected.

I do hope the chairman will recognize that I take somewhat interest in the fact that not only have we had great difficulty with the Rock Island road, but I see their map has completely blanked out the Democratic side of this committee.

Senator **Kassebaum**. That was not intentional, I assure you.

Senator **Exon**. I'm delighted to see that that was just one of those unusual coincidences.

Senator **Kassebaum**. It should be marked in red.

Senator **Exon**. Yes, it's marked in the right color but it's on the wrong side of the aisle.

I just would hope that this legislation would maybe shock those in charge of this very difficult situation. I recognize that it isn't all one-sided because I've been through many years of railroad difficulties throughout our part of the country. The Rock Island happens to serve a rather small part of Nebraska on that map, but it's a very vital part of our State. And it happens to go through some communities that would be very vitally interrupted, unless it continued.

I think all of us who believe in the free enterprise system recognize that the railroads overall have to make money if they're going to stay in business, and we are not required here to subsidize these roads as we have in the case of Conrail, and other circumstances throughout the United States. Nevertheless, I am convinced there's been less than total cooperation and understanding by all parties involved herein, and all that we're seeking here in this bill is some sign of fairness, an indication of willingness to try and cooperate with the local shippers so that the road can be maintained, rather than unilateral action that cuts it off.

I thank you, Madam Chairman.

Senator KASSEBAUM. Thank you, Senator Exon. We appreciate your being here.

I would like to call the first witness, Robert Blanchette, Administrator of the Federal Railroad Administration. Mr. Blanchette?

STATEMENT OF HON. ROBERT BLANCHETTE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Mr. BLANCHETTE. Good morning, Madam Chairman, Senator Exon. I think, perhaps, I should make reference to the bipartisan map that you earlier called into play. A smaller copy of that map is appended to our testimony.

Basically, what we attempted to do in aid of the committee's deliberations is show geographically the scope of the problem, just so that we know what it is. The lines that are color coded in green are the lines that have been sold, or for which there is a contract of sale held by the trustee, and that are being operated today. The lines that are in red are lines that are being operated and acquisition for which there are negotiations pending between the trustee and various parties. The lines that are in black are lines that are not being presently operated, but for which there are negotiations looking to the ultimate purchase or long-term lease of that line. The lines, alas, that are white, are lines that are not presently being operated and for which we, the Department of Transportation, know of no negotiations pending that are looking to acquisition. However, the trustee would be in a better position to know whether or not there are negotiations pending of which we are not aware.

Madam Chairman and members of the committee, I would be grateful if my formal statement could be entered in the record of these proceedings. I will attempt to summarize my statement.

Senator KASSEBAUM. Thank you.

Mr. BLANCHETTE. I am certainly pleased to be here and have been pleased over these last few months to be working with you, Madam Chairman, to meet some of these difficult, agricultural/rail-related problems. I had the pleasure yesterday of testifying before Senator Abdnor of the Subcommittee on Agriculture and Trade, of the Joint Economic Committee, on the transportation needs of agriculture. Of course, the statistics and the figures are devastating, in terms of the importance to agriculture of adequate solid rail transportation and reliable rail transportation.

Basically, the bill which you and others have introduced answers a question that has been posed under the old section 77 of the Bankruptcy Act. That question is: When a railroad no longer has a certificate of public convenience and necessity, is it under an order to liquidate? What is the role between the competing interests of the public in adequate and reliable rail service, and the creditors of the estate in compensation for the use of their property?

I know full well from my experience on the Penn Central, as a trustee, that the balancing role during the pendency of an ongoing reorganization is a very difficult one. However, those interests are always accommodated, sometimes painfully, but they are accommodated.

This legislation answers the question of what happens on the other side of the reorganization, namely, in the liquidation context. It clarifies that which I think is the law today, which is that the public interest and the private interest must continue to be accommodated. One cannot be subservient to the other.

This bill clarifies that which I think is presently in the intent of section 77. It says that when a line can be continued in operation, it should be. However, that does not mean that the trustee, the creditors, or the owners of the estate must be handmaidens to that public interest, but rather that a reasonable and constitutional mechanism can be put into place to reconcile and accommodate those interests. I think that S. 1879 accomplishes those objectives in a very commendable fashion.

This is a very important and timely matter. The record is replete with references to the importance of the Rock Island Railroad. It was a major handler of export grain. It accounted for 10 percent of all grain moved by rail west of the Mississippi and served 15 percent of the Nation's grain elevators. But it was not only confined to agricultural uses. We have an instance in the Chicago area that's painted in red where very important manufacturing interests are served. One plant there employs of 2,000 people. We don't know what's going to happen to that plant because we don't know whether there line can be rehabilitated. There are agricultural and other vitally important interests that are involved.

In the testimony we referred to the status of the Rock Island lines.

Essentially, the green lines total 1,570 miles of the original 6,000-mile Rock Island system. The lines owned by the Rock Island estate and being operated under temporary arrangements, are the red lines, totaling 2,752 miles. The lines not being operated, for which there appears to be an interest of purchase, are the black lines, totaling 721 miles. The white lines, the blanked out lines, total slightly over 1,000 miles.

We have compared our figures, by the way, with those presented by the Chairman of the Interstate Commerce Commission. There are some small differences in the numbers. Basically, they are attributable to the fact that we have not included in our figures, which are appended to our testimony, trackage rights for lines that are not owned by the Rock Island estate. Also, we have given the trustee credit for lines for which there has been a contract of sale but for which the sale has not been formally approved by the reorganization court. We have a high confidence that the court will endorse the sale.

You are painfully aware, as are all of us, of the purchase efforts which have been characterized and described in my testimony. I will just call forth one sentence in my testimony: "Without any attribution of fault, the status quo can be characterized as a massive stalemate."

I want to emphasize that, without attribution of fault, as a member of the Trustee Alumni Society, I find all trustees are reasonable, and sometimes rise to the level of infallible.

I also understand very well the interests of the creditors in the estate. I was involved in major constitutional litigation involving the Regional Rail Reorganization Act of 1973, and spent more time than I care to remember with creditors representing their interests. I think, here, the fault is not personal fault. The fault is not the fault of obduracy or obstinacy. The fault is one of process. There is no process presently extant to accommodate and reconcile these competing interests.

I think the legislation which you have introduced fills that gap, fills that void. Accordingly, I think it will become a meaningful tool in arriving at accommodation here. I also think that it forms a model upon which can be crafted a mechanism which the trustee and the creditors, as well as the purchasers, can support. We will hear from them whether or not they support this particular prototype of the model.

By filling in a constitutional process and a speedy process, we can serve a great public interest. I emphasize "speedy." Unless something happens, OKT service will cease at the end of this year. I don't think we can afford to let that happen.

I should be pleased to answer any questions you may have, Madame Chairman.

We have some comments on the particulars of the legislation, but I see my time is up.

Senator KASSEBAUM. Thank you, Mr. Blanchette. I very much appreciate your testimony, not only for the role you hold as Administrator of the Federal Railroad Administration, but also in this particular case, because of your background as a trustee in the liquidation of one of the largest systems in the country.

I would like to ask you two questions that seem to be at the bottom of our concerns with this issue.

I am appreciative of your saying that the fault is with the process. That's why we have tried to provide a legislative vehicle that might expedite it.

The question of the constitutionality of the legislation has been raised. I would like to ask what you feel are the principal constitutional issues involved, and how you analyze them in relation to this legislation.

Mr. BLANCHETTE. We have deferred, on the matter of constitutionality, to the Department of Justice. Although I am enjoined from practicing law in my capacity as Federal Railroad Administrator, I could share a few observations with you.

Clearly, the Congress has the right to regulate the areas of uniform bankrupcy laws and commerce. There is no question here that this statute would fall within the permitted jurisdiction of the Congress, in both the bankruptcy and commerce areas.

I think the legislation has been very carefully crafted to avoid constitutional pitfalls. The concept of net liquidation value is specifically contained in the statute, the net liquidation value being the value at which, I think, these lines would be measured. They are not going concerns, but even going concerns can be subsumed within the concept of net liquidation value, as the recently settled litigation in the special court demonstrated in the case of Penn Central and the other northeast lines.

In addition to that, the bill contains a specific reference to the reorganization court, so as not to oust that court from its review jurisdiction, which has been traditional—not only under section 77 but also in equity receiverships—prior to the Chandler Act.

The review standard for the rail reorganization Court is a constitutional minimum. That review standard is the one which the Supreme Court upheld in respect to the reorganization of the Penn Central and the conveyance of its lines to Conrail. Therefore, there has been a specific Supreme Court finding on net liquidation value and constitutional minimum. Unless something has happened to the law since I last practiced it, I would be surprised if this process did not pass constitutional muster.

Senator **Kassebaum**. One of the apparent difficulties in these negotiations has been the question of liquidation value.

Do you know whether the Department of Transportation has made any studies of valuation, and how we can somehow arrive at an independent valuation that would be accepted, or at least perceived as being creditable by both sides?

Mr. **Blanchette**. The concept of net liquidation value is an elusive one. Frankly, reasonable men can differ, and have, on the concept of net liquidation value.

I, for one, would be satisfied with the expertise of the Interstate Commerce Commission to make a determination of net liquidation value. It's got a good track record in this area.

The Commission is knowledgeable with respect to these lines and the background of the Rock Island reorganization. It has had a traditional expertise in railroad reorganizations and, while the Rock Island is not an ongoing railroad, the net liquidation value is a concept with which the Commission is familiar in this and other proceedings. I see no reason why, and in fact, think it might be a mistake, to eschew the expertise of an agency of the Government which has been built-in expertise in this area.

As a tribunal and a forum, I think the Interstate Commerce Commission has to be the prime candidate for determining that elusive concept, subject, as is contained in the bill, to review by a court. In this case, the reorganization court. The concept of net liquidation value must be brought into accord with the concept of constitutional minimum value.

I think that one would have to go a long way and make some farfetched, tortuous arguments to fault that process.

Senator **Kassebaum**. Do you believe the time frame, as outlined in the bill, allows sufficient time for due process for all of the involved parties.

Mr. **Blanchette**. I think procedural due process can be served within an even shorter timetable. I think I could trim that process down to about 75 days.

For example, the bill, as presently proposed, says that after a negotiation has failed and the trustee has rejected a bona fide offer from a financially responsible person, a paper is lodged with the Commission the 60-day period runs from that time for further negotiations.

To put it charitably, looking at the history of this case, we have reached a point where we don't need 60 more days of talks. You could trim that period off and say, "Look, we all know who's who and what's what." If the process is to be evoked, then the party will go to the Commission and say, "Look, we have been trying. We have a bona fide offer from a financially responsible person, we haven't gotten anywhere, and I don't think we need 60 more days to talk."

Then the Commission could immediately start activating its processes, during which it would make three determinations:

1. That there is a financially responsible person;
2. That there is a bona fide offer; and
3. To begin to establish the process for net liquidation value.

I think so highly of the Commission's expertise that I think we could safely trim off that 60 days.

In other respects as to time, while I don't feel strongly on the issue, I call to your attention the recently passed Northeast Rail Services Act. In respect to the transfer of lines in Connecticut and Rhode Island, on which we concluded settlement on last night, the statute provides that a purchaser must commit to a 4-year operation of rail lines.

This statute talks about a 2-year time, which is a very short period of time in which to rehabilitate these lines, which are desperately in need of rehabilitation, and to see the fruits of that rehabilitation in the form of a return on the investment.

Without urging the matter on you, I would call to your attention the fact that a similar provision, in New England, calls for a 4-year period. One might want to consider that in this regard.

Senator **Kassebaum**. Thank you very much, Mr. Blanchette.

My time has run out. I have another question, which I will come back to.

Senator Exon?

Senator **Exon**. Thank you, Madam Chairman.

Mr. Blanchette, it is your opinion—I want to emphasize this—I believe you said earlier that the legislation that has been introduced could enhance the chances of working out at least some of the difficulties that we see on that map?

Mr. **Blanchette**. Yes, sir.

Senator **Exon**. Has there been legislation of this type previously, to your knowledge, in the other railroad matters that you have been involved in?

Mr. **Blanchette**. Yes, sir. A very similar mechanism was used in the contest of the Regional Rail Reorganization Act of 1973, by which the properties of the Penn Central, the Erie Lackawanna, and other Northeast bankrupts were transferred. The Supreme Court sustained the constitutionality of the bill, noting that there was a taking, and that the taking was compensible by the United States.

Here it is important not to have a taking. We are not interested, as an Administration, in another nationalization. We're still paying for the first one. I think the bill has been carefully crafted to draw upon the precedents of that statute, of that case, but without invoking a taking.

I think that one can take great comfort from the Supreme Court decision which upheld the Regional Rail Reorganization Act.

Senator EXON. Thank you.

Senator KASSEBAUM. It is my understanding that those who are opposed to this legislation are concerned that a decision would be binding on one party but not on the other.

I would like your views regarding a condemnation process versus the one proposed in the legislation.

Mr. BLANCHETTE. I can tell you without equivocation that a condemnation by the United States is not favored by this Department, nor, I believe by this administration. There has been some talk of a State condemnation. I'm not familiar with all of the procedures for State condemnations. There may be pitfalls. There may be areas in which there can be no condemnation.

However, I would note that a condemnation works in favor of the sovereign. We have a number of private parties who wish to acquire these lines. We have the possibility of a private-sector solution for many of these lines. Some of these buyers are shippers, shippers associations, and other railroads.

Things have come to a poor pass when we force the sovereign to condemn property when there are private individuals who are willing to put up their own money to make the acquisition. I don't know why we have to force ourselves into a condemnation mode when there is a process which permits the private sector, subject to legitimate restriction, to establish a purchase. I always think that the Government should be a buyer of last resort.

Senator KASSEBAUM. It does seem tragic that we have reached the point where we would consider either salvage or condemnation, where we should be trying to revitalize and use our rail transportation system.

Senator EXON. No further questions.

Senator KASSEBAUM. Thank you very much.

Mr. BLANCHETTE. Thank you very much.

[The statement follows:]

STATEMENT OF HON. ROBERT W. BLANCHETTE, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

I appreciate the opportunity, Mr. Chairman, to discuss with you and the Committee the status of the operating properties of the Rock Island Railroad and the provisions of S. 1879.

S. 1879 deals with a very important policy issue associated with the liquidation of a bankrupt railroad. In a normal railroad reorganization under section 77 of the old Bankruptcy Act, the trustee played a dual role. On the one hand, he was charged with protecting the public interest in the continuation of the debtor's rail services. On the other, he was charged, as a fiduciary, with preserving the assets of the estate for the benefit of its owners and creditors. In cases where continued rail operations involved substantial and recurring losses, the duty to keep the public and private interests involved in balance became a difficult and often conflicting charge. The Rock Island case presents a somewhat different question: once a bankrupt railroad corporation has ceased operations as a common carrier, should the course of the ongoing bankruptcy proceeding continue to be charted with these dual public/private objectives in view?

S. 1879 answers this question in the affirmative, and I think rightly so. Just as the rights of creditors and the shipping public can be reconciled in a normal reorganization, so too can these competing interests be accommodated in a liquidation. No one controverts the right and duty of a trustee to seek and receive a fair and equitable price for the property under his stewardship. At the same time, however, the public's need for continued rail service in a major area of interstate commerce should not be used as an unfair lever to force a price beyond economic worth of the property. In addition, public need should never be a pawn of the law's delay.

S. 1879 resolves the problem by re-stating that the goal of continued service is a priority when sales of a bankrupt's rail properties are being considered. It accommodates creditors' interests by imposing a reasonable--and constitutional—mechanism for settling differences as to price. Thus, in the absence of agreement, the Interstate Commerce Commission would determine a reasonable purchase price and the Reorganization Court would reserve its traditional jurisdiction to decide whether the purchase price so arrived at meets constitutional requirements.

These hearings are timely, since the Rock Island system served major economic interests and the status quo is unsatisfactory. The Rock Island was a major handler of export grain. It accounted for 10 percent of all grain moved by rail west of the Mississippi and served 15 percent of the nation's grain elevators. The Rock Island also served many important non-agricultural interests. For example, one plant served exclusively by the Rock Island in the Calumet district of Chicago employs some 2,000 people. It has an uncertain future because of stalled negotiations between the Trustee and a potential purchaser.

The call of the chairman for these hearings asked the Department specifically to address three areas: (1) the status of Rock Island service, (2) the status of efforts to purchase various lines and (3) the provisions of the S. 1879.

STATUS OF ROCK ISLAND LINES

Most rail service on the lines of the Rock Island Railroad is being provided by interim operators who have been given temporary operating rights by the ICC. These arrangements have been in place since March 30, 1980, and without doubt, have prevented a service void that would have been disastrous to Midwest States.

I have attached a Rock Island system map to my testimony. A larger version of the map is on the easel. The solid green lines indicate those properties which have been sold or are under long-term lease or for which a purchase contract has been signed. The red lines are those on which interim operations are being conducted and for which purchase offers have been made. The black lines are those not currently operating but which are being considered for acquisition. Finally, the white lines are not in operation and we are not aware of any active interests to purchase them for continued railroad use.

In summary, lines which have been sold, leased or contracted for (the green lines) total 1,570 miles of the original 6,092-mile Rock Island estate and being operated under temporary arrangements (the red lines) total 2,752 miles, including the Dallas-Houston line jointly owned with the Burlington Northern; lines not being operated but for which there appears to be an interest to purchase (the black lines) total 721 miles. Finally, lines not being operated and for which we know of no active purchase interest (the white lines) total 1,049 miles.

I have also attached to my testimony a listing of the specific purchasers, interim operators and prospective purchasers known to the Department.

EFFORTS TO PURCHASE

On January 25, 1980, the Reorganization Court ordered the Trustee to prepare a plan of liquidation for Rock Island Railroad properties. The Trustee since has either sold, entered a long-term lease or contracted to sell a total of 1,570 route miles, which is 26 percent of the former Rock Island system. The largest property sold was the 933-mile "Tucumcari Line" from Santa Rosa, New Mexico, to St. Louis, Mo. That sale was negotiated before the court ordered liquidation.

While interim operations have kept service in place on many Rock Island lines, the temporary, uncertain future for that type of operation has had a negative impact. Shippers are not able to fully commit their traffic to operators that may have to withdraw because they have not settled upon a sales price. The operators cannot make the necessary investments in track rehabilitation and other facilities without clear ownership; as a result, service to shippers is often unsatisfactory.

Without any attribution of fault, the status quo can be characterized as a massive stalemate. My staff has brought to my attention several salient examples. The Chicago and North Western Transportation Company has been trying to purchase various lines of the Rock Island in Iowa, including the Grain Route, since February 1, 1980 without reaching agreement. The Missouri-Kansas-Texas Railroad Co., joined later by the Oklahoma-Kansas-Texas Rail Users Association, has been trying since February 1980 to purchase lines in Kansas, Oklahoma and Texas and have not reached agreement. The Mid-States Port Authority has been negotiating for grain hauling lines in Kansas since September 1980 with little success.

S. 1879

S. 1879 seeks to end this stalemate by involving the Commission as a neutral party to establish a reasonable price when the parties cannot agree, subject to ultimate Reorganization Court review.

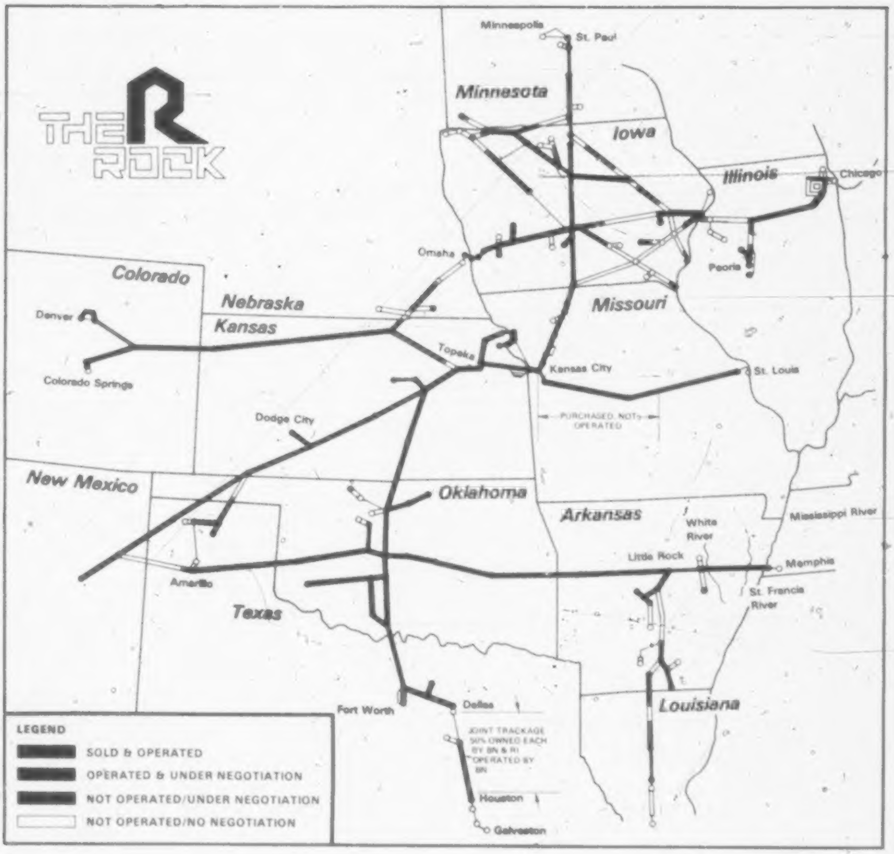
There are several changes in the bill which I would urge the committee to consider in aid of its laudable objectives. These are:

1. *Time Limits.*—As presently drafted, the bill provides a total of 195 days for the administrative process. We believe a shorter period is feasible and consistent with requirements of procedural due process.

2. *Court Decisions.*—The bill does not provide a period within which the court must consider the Commission's purchase price. We recommend that such a reasonable time limit be established.

Subsequent to the call for this hearing, we were informally requested to provide our views on the constitutionality of S. 1879. We have submitted this question to the Department of Justice which has responsibility within the executive branch for issues of constitutionality. We will be guided by the Department of Justice's views on this matter and will be pleased to provide them to the committee when we receive them.

Mr. Chairman, that completes my prepared testimony and I would be pleased to answer any questions you or other committee members may have.


THE ROCK
Minneapolis
St. Paul
Minnesota
Iowa
Illinois
Chicago
Omaha
Peoria
Colorado
Nebraska
Kansas
Missouri
Denver
Colorado Springs
Topeka
Kansas City
St. Louis
PURCHASED NOT OPERATED
Dodge City
New Mexico
Oklahoma
Arkansas
White River
Mississippi River
Little Rock
Memphis
St. Francis River
Amarillo
Texas
Fort Worth
Dallas
Louisiana
JOINT TRACKAGE 50% OWNED EACH BY BN & RI OPERATED BY BN
Houston
Galveston
LEGEND
SOLD & OPERATED
OPERATED & UNDER NEGOTIATION
NOT OPERATED/UNDER NEGOTIATION
NOT OPERATED/NO NEGOTIATION

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STATUS OF ROCK ISLAND LINES, DEC. 4, 1981

[Sold, long-term lease, contract to buy]

	Total miles	Area	Status
PURCHASED PROPERTIES			
Purchaser:			
Cedar Rapids & Iowa City Ry	7.0	Iowa City to Hills, Iowa	Purchased.
Continental Group	25.0	Hodge to Winnfield, La., trackage rights Winnfield to Alexandria, La.	Contract approved by reorganization court.
Fordyce & Princeton	54.0	Crossett to Fordyce, Ark	Do.
Keokuk Junction RR	4.0	Keokuk, Iowa	Purchased.
Little Rock & Western	44.0	Pulaski to Perry, Ark	Contract approved by reorganization court.
Missouri Pacific	40.2	El Dorado, Ark., Hot Springs line in Arkansas.	Purchased.
North Central Oklahoma RR	133.8	Anadarko to Mangum, Okla., Enid to Ponca City, Okla.	Contract approved by reorganization court.
Peoria & Pekin Union	2.8	Pekin, Ill	Purchased.
St. Louis & Southwestern	933.5	St. Louis, Mo. to Santa Rosa, N. Mex	Do.
State of Oklahoma	62.0	Hydro to Elk City, Okla	Do.
TECE Corp	97.0	Hardesty, Okla. to Stinnett, Tex., Morse Junction to Etter, Tex.	Contract approved by reorganization court.
Baltimore & Ohio (Chessie)	111.3	Blue Island to Bureau, Ill., Bureau to Henry, Ill.	Long-term lease.
Royal-Manson Shipper Association	55.0	Royal to Manson, Iowa	Contract to purchase subject to FRA financing.
Total mileage	1,570.0		
INTERIM OPERATIONS			
Prospective purchaser/interim operator:			
Brandon Corp	83.0	Belleville to Manhattan, Kans	Have purchase offers made and negotiations in various stages.
Burlington Northern	372.6	Burlington, Iowa, Phillipsburg to Caruso, Kans., Mossville to Peoria, Ill. including Keller Branch, O'Keene, Okla., jointly owned Waxahachie to Houston, Tex., Enid to Wichita, Fort Worth to Dallas.	Do.
Cadillac & Lake City	111.6	Colorado Springs and Rosewell, Colo., Denver, Colo., Limon, Colo., to Caruso, Kans.	Do.
Chicago & North Western	798.4	Sibley, Iowa/Worthington, Minn., Omaha, Nebr./Minneapolis, Minn. to Kansas City, Mo., Northwest Iowa Grain Lines.	Do.
Chicago Short Line Ry. Co		Calumet, Ill. (lead track)	Do.
Davenport, Rock Island & North Western.	1.7	Moline and Rock Island, Ill	Do.
Fort Worth & Denver	7.0	Amarillo to Bushland, Tex. including Amarillo terminal trackage.	Do.
Iowa Northern RR. Co	90.7	Vinton, Iowa, Cedar Rapids to Waterloo, Iowa, Shell Rock to Nora Springs, Iowa.	Do.
Iowa RR. Co	117.7	McClelland to Dexter, Iowa, Audubon Junction to Audubon, Iowa, Hancock to Oakland, Iowa.	Do.
ROCK ISLAND LINE SUMMARY			
Purchase offers/interim operations:			
Keota Washington Transport Co	91.7	Keota to Washington, Iowa, Vinton to Iowa Falls, Iowa.	Do.
Little Rock & Western	9.6	Little Rock to Pulaski, Arkansas loop track.	Do.

STATUS OF ROCK ISLAND LINES, DEC. 4, 1981—Continued

[Sold, long-term lease, contract to buy]

	Total miles	Area	Status
Louisiana & Arkansas Ry. Co		Dallas, Tex.-(Cadíz Yard)	Have purchase offers made and negotiations in various stages.
LaSalle & Bureau County RR	22.9	Chicago to Blue Island, Ill	Do.
Milwaukee Road	85.0	Davenport to Fruitland, Iowa, Davenport to Iowa City, Iowa, Newport-St. Paul, Minn.	Do.
Missouri-Kansas-Texas	804.4	St. Joseph, Mo. to Dallas, Tex., Salina to Herington, Kans., El Reno to McAlester Okla., Chickasha to Richards Spur, Okla.	Do.
Missouri Pacific	48.4	Little Rock to Hazen, Ark., Little Rock-vicinity.	Do.
Norfolk & Western	4	Pullman Junction to Calumet Expressway, Chicago, Ill.	Do.
St. Louis & Southwestern	65.3	Topeka, Kans. and Stuttgart, Ark., Brinkley to Briark, Ark.	Do.
Santa Fe	1.3	Alva, Okla	Do.
Southern		Memphis, Tenn. (yard)	Do.
Toledo, Peoria & Western		Keokuk, Iowa (yard), Peoria Terminal-Hollis to Iowa Junction, Ill. (yard).	Do.
Union Pacific	36.5	Beatrice, Nebr., Fairbury to Hallam, Nebr.	Do.
Total mileage	2,752.0		
NO INTERIM OPERATIONS			
Prospective purchase:			
Mid States Port Authority	173.0	Colorado Springs to Limon, Colo., Philipsburg to Belleville, Kans.	Purchase offer made.
Missouri-Pacific	59.0	El Dorado, Ark. to Bernice, La., Little Rock to Haskell, Ark.	Do.
States of Arkansas and Oklahoma (A-OK).	399.0	Amarillo, Tex. to Elk City, Okla., Hydro to El Reno, Okla., McAlester, Okla. to Perry, Ark., Hazen to Brinkley, Ark.	Do.
State of Oklahoma	90.0	Geary to O'Keene, Okla., Richards Spur to Waurika, Okla.	Do.
Total mileage	721.0		

Senator KASSEBAUM. The next witness is Reese Taylor, Chairman of the Interstate Commerce Commission. Mr. Taylor.

It's a pleasure to welcome you here today.

STATEMENT OF HON. REESE TAYLOR, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY HENRI RUSH, ASSOCIATE GENERAL COUNSEL, JAN ROSENAK, LEGISLATIVE COUNSEL; LOU GITOMER, CHAIRMEN'S STAFF; AND MEL CLEMENS, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Mr. TAYLOR. Thank you, Madam Chairman, Senator Exon. It's a great privilege to be here. I would just like to note for the record that I have with me on my left, Jan Rosenak, the Commission's Legislative Counsel; on my extreme left, Henri Rush, from our General Counsel's Office; on my extreme right, Mel Clemens of the

Commission's Office of Compliance and Consumer Assistance, and sitting next to me on my right, Lou Gitomer of my staff.

We thank you for the opportunity to appear here today to present the views of the Commission with regard to the Rock Island rail system. I have submitted a written statement for the record and will summarize that statement for you now.

To place the current situation in perspective, I will briefly present background information on the Rock Island Railroad and the Commission's experience with directed service. I will then discuss what has occurred since passage of the Rock Island Transition and Employee Assistance Act, better known as RITEA. Finally, I will discuss the provisions of S. 1879, the Milwaukee Railroad and Rock Island Railroad Amendments Act.

As you know, the Rock Island filed for reorganization in March of 1975, at which time it operated a system of over 7,000 route miles. As contemplated by the Bankruptcy Act, the court-appointed trustee operated the Rock Island while attempting to formulate a feasible reorganization plan. However, in September of 1979, the Commission found the Rock Island to be cashless and ordered the KCT to provide directed service over substantially all Rock Island lines. Subsequent service orders directed the KCT to provide service over reduced portions of the Rock Island until March 23, 1980. These were mandatory service orders and necessitated payments to the KCT by the Federal Government.

When these funds ran out, the Commission issued permissive service orders to other rail carriers to operate over the Rock Island on a nonsubsidized basis. Those orders provided that each carrier and the trustee negotiate the terms of compensation due the Rock Island for the use of its lines. If agreement could not be reached, the Commission was to set reasonable compensation. When the Commission was asked to set compensation, the "Frisco" formula was used in a number of instances. This formula, as you know, set compensation at the rate of $1,250 per route mile per year, plus 14.4 percent of net revenues from operations over the involved lines. The courts have approved the use of this compensation formula on an interim basis; however, the Commission is presently considering whether temporary service should be terminated or permitted to continue and whether the formula should be revised in light of the actual operating experiences of the interim carriers.

During the period of subsidized directed service, on January 25, 1980, the reorganization court ordered the Rock Island liquidated on the ground it could not be reorganized. On June 2, 1980, the court ordered a systemwide abandonment. Just a few days earlier, however, on May 30, 1980, Congress enacted RITEA.

One of the goals of this legislation was to prevent cessation of rail service over lines for which purchasers were available. I am sorry to report that to date only a small portion of the system has been sold. Excluding the 967-mile Tucumcari line—for which a purchase agreement had been executed well in advance of the court's liquidation order and passage of RITEA—the trustee has sold only several hundred miles of the Rock Island system.

Although few lines have actually been sold, negotiations are continuing for the sale of other lines, and it is clear that purchasers for additional Rock Island trackage are available. The problem is the price to be paid, particularly in view of the fact there is no recourse to an outside party should negotiations reach a stalemate. In various instances, it appears that such a stalemate has been reached.

RITEA established a structure for operations by other carriers and for compensation for use of the tracks and facilities of the Rock Island. We have authorized service and set compensation pursuant to RITEA on various occasions. When these orders were appealed to the seventh circuit, the trustee alleged that they involved a taking without just compensation in violation of the fifth amendment. However, the court found that there was no taking under the fifth amendment, and that the compensation formula was reasonable under the circumstances.

Although the provisions of RITEA have been useful in continuing essential services over the Rock Island system, that legislation does not deal with the problem of stalemated negotiations between the trustee and various potential purchasers. S. 1879 appears to present a viable solution to this situation. It establishes a procedure whereby a financially responsible person could resort to the Commission if its bona fide offer to purchase a rail line has been rejected by the trustee.

If the Commission determines a "reasonable offer" has been made by a "financially responsible person," and if the parties still cannot agree, the Commission would be authorized to determine a reasonable purchase price which cannot be less than the net liquidation value of the line. This approach is similar to the procedures available in rail abandonments under section 10905, as amended by the Staggers Act. The legislation would then require the court to approve the sale so long as the purchase price is not less than required as a constitutional minimum for the line.

The Commission believes this approach strikes an appropriate balance between the interests of creditors, shippers, and the estate and will be fair to all parties involved. We also believe it will provide a means of resolving stalemates. It allows parties who are prepared to pay a reasonable price to purchase lines for continued rail service. In this regard, it should be emphasized that many shippers are captive to the Rock Island and they would be left without viable transportation alternatives if rail service is discontinued.

The legislation protects creditors and the estate because the purchase price cannot be less than the constitutional minimum for the line. The creditors and the estate will also benefit from the more expeditious disposition of rail properties which should result from this legislation.

In sum then, the Commission supports S. 1879, and believes it is helpful in clarifying our responsibilities and in assisting to insure that essential rail service is continued where financially responsible persons are willing to purchase rail lines at reasonable prices. We agree with the Department of Transportation that the timeframes in the legislation could be shortened, and that a deadline for court action—perhaps 60 days—should be included. In addition, we support the proposed clarification of the period during which Congress intended the Commission to exercise its authority under section 122.

My prepared statement mentions the problems encountered with the employee protection provisions of RITEA, and also discusses the possible constitutional ramifications of S. 1879. Because of time limitations, I will not discuss these matters now. However, I will be glad to answer any questions you may have on the proposed legislation and the Rock Island situation.

Senator **Kassebaum**. Thank you very much, Mr. Taylor. I also would like to say we have been very appreciative of your interest in this whole issue and your recognition of the importance it has to us throughout the Midwest.

I was interested in your comments regarding the time period. Do you feel that the ICC would be able to make the valuation determination in a shorter period of time?

Mr. **Taylor**. In the abandonment area, we have been performing valuations and issuing decisions within a 60-day period, and I believe we can act on a valuation as envisioned by this bill within such a 60-day period. Although we indicated in the testimony I have presented that the overall time period could be shortened, we do not believe that the 60-day valuation timeframe should be changed. As presently staffed, we think the Commission has sufficient resources to deal with valuations within the timeframes of the bill; however, I can't turn down this opportunity to say that if we are confronted with serious budget cuts, our ability to do so might well be jeopardized.

I do have some specifics which Jan Rosenak could present to you as to specific areas where we feel timeframes could be shortened, or we could submit those for the record, if you so desire.

Senator **Kassebaum**. You would keep the 60 days for the valuation period?

Mrs. **Rosenak**. That's correct.

Senator **Kassebaum**. That seems to me the most important part. It's the heart of the issue.

Mrs. **Rosenak**. We do feel the other timeframes could be shortened, but it does appear essential that the Commission have adequate time to reach its decision on purchase price. For that reason, we would retain that 60-day time period.

Senator **Kassebaum**. I gather you would also be supportive of a 4-year commitment for operation rather than the 2-year period provided in the bill. Do you have any comment on this?

Mr. **Taylor**. I believe I do. We don't have any specific information at this time on what burdens would be created by a 4-year service requirement on the plans of specific prospective purchasers. Generally, however, it would not be a burden, in our opinion. Prospective purchasers seem to be optimistic about the prospects of the lines they intend to purchase and plan to continue service for the indefinite future. However, there are at least two situations which come to mind that we thought we ought to bring to the committee's attention with regard to whether a 4-year requirement might be burdensome.

First, various Rock Island lines have been operating at a loss and should the purchaser's optimism be unfounded, required continuance for a lengthy period could create a burden. And second, carriers purchasing particular segments might desire to abandon track as they consolidate operations. Under those circumstances, they might consider a 4-year prohibition a problem. Moreover, the required service period is related to the definition of financially responsible person in section 4 and, accordingly, a change in the service requirement might affect the eligibility of persons who could qualify under that section.

Finally, I would also point out that the present standards for purchase applications under section 10905 prohibit discontinuance for only 2 years.

Senator KASSEBAUM. This is a rather lengthy question, but I'd like to get your comment on it for the record. Section 5 of this legislation amends the Rock Island Transition Act by providing that the Commission will continue to have authority to issue directed service orders to volunteer carriers until a plan of reorganization or liquidation is approved by the Commission and the court. This will certainly resolve problems we are now experiencing with the OKT directed service over approximately 900 Rock Island route miles.

Do you believe it would be wise to grant the Commission the authority to issue such directed service orders until a sale has actually been consummated, instead of the date that the reorganization plan or liquidation is approved by the Commission and the court? It appears that a reorganization or liquidation plan could be approved several months prior to the actual consummation of the sale of properties. Might that extra time result in the same problem we're experiencing today with the OKT?

Mr. TAYLOR. Madam Chairman, I believe your question assumes that reorganization or liquidation plans will be presented for approval before the sale has actually been consummated. We believe it is unlikely that this will occur.

Senator KASSEBAUM. It is under the present operation.

Mr. TAYLOR. Since in many instances a liquidation plan will only be submitted after a sale has been consummated, I think it's probably pretty clear, too, in this particular situation with this particular trustee that that's the way—he can respond to that on his own—but that's the way he would react; that he would want the sale completed and the money inhand. However, in the event that a reorganization or a liquidation plan was offered prior to consummation of the sale and payment of the moneys—and that could happen—an exception might be warranted. So we would suggest under those circumstances that if consummation of the sale is, in fact, imminent, an exception might be included to provide continued authority for the Commission in that particular instance subject, let's say, to a cut-off date such as 60 days.

Senator KASSEBAUM. Thank you.

Senator Exon?

Senator EXON. Thank you, Madam Chairman.

Mr. Taylor, let me go back, if I might, a moment. You said something about budget restrictions. I believe I understood you to say even with the budget restrictions in your agency, you feel that you would be in a position to carry out the intent of this act; is that correct?

Mr. TAYLOR. I think as we are presently staffed, Senator, we could make the evaluation that this act would call for. I am simply using the opportunity of being here on the Hill to suggest that if we were drastically cut, that ability might be jeopardized. But as things stand now, I think we're in a position to be able to handle the evaluations within the 60-day period specified in the legislation.

Senator EXON. Your admonition drew the attention of this Senator, and my colleague and I both serve not only on the Commerce Committee and are vitally concerned about railroads, but we also serve on the Budget Committee. So both of us are on both sides of this matter.

Let me ask this question: Was your agency cut the additional full 12 percent, as recommended by the President this fall; or has that been tapered back?

Mr. TAYLOR. It has been somewhat tapered back. Of course, we still don't really know where we are at the moment, until everything comes out of the wash on December 14 and 15. Originally, the Carter administration had us down for, I think, $84.5 million, and the original cut that we were faced with was to $79 million. There was a presentation made on the House side, which wound up reducing our budget to some $68 million. Then the 12 percent came along. I arrived on the scene at about that time. I did everything I could to at least get back to the $79 million, and we were successful in getting to $74.5 million, as I recall it now, on the House side. But before Senate action could be taken, the 12 percent was suggested, and that was something the administration was calling for. So I have to say we kept a rather low silhouette at that point in time. I think we wound up with $74.5 million, the House figure. Now they're talking about perhaps a million or two more off as a result of what will ultimately transpire later.

Senator EXON. Fiscal year 1982?

Mr. TAYLOR. In fiscal year 1982, correct.

Senator EXON. I assume you have eliminated all fraud, waste, and abuse?

Mr. TAYLOR. We like to think we're really working on it. I've only been onboard about 5 months, but I think we're ahead of all of the other independent agencies on regulatory reform. One of the first things I did was ask my chief of staff to sit down and go through the entire Code of Federal Regulations in an effort to weed out everything we could find that was outdated or no longer enforceable, didn't make sense any longer, and we've got, I think, about a 10-page list which we have prioritized and are in the process now of throwing those all on the funeral pyre. So we're doing our best, although I won't say that the job is completed as yet.

Senator EXON. Mr. Taylor, have you been consulted about what the Office of Management and Budget has in mind for your particular agency for the address that the President will make to us next month? The reason I'm asking these questions very seriously is the fact that while we all recognize the budget restraints and further cuts are necessary, if you're not provided the money to your agency, it has a disasterous effect out here in these communities that are being just terribly penalized, unless we can work out something on their overall transportation need.

Mr. TAYLOR. You're absolutely right.

Senator EXON. Have you been consulted about 1983?

Mr. TAYLOR. Yes, we have, as a matter of fact.

Senator EXON. What does that look like?

Mr. TAYLOR. They haven't given us a number yet. I talked to my friend Alan Green over at the Maritime Commission. They've gotten theirs, and we've had an indication that it's going to be little better than what they originally had in mind for us, which I think was somewhere around the $60 million area, which we felt was really drastic. I must say, though, that we went down to OMB for what was supposed to be about a 1-hour conference, and they had an unbelievable set of questions. We were there for over 4 hours. And I hope by the time we were finished we convinced them that they wouldn't do to us what they originally had in mind. They have indicated that we're going to get a little better number than that, but what specifically it is at this point in time, I don't know. We hope to learn in the next few days.

Senator EXON. I just wish to say in closing, Madam Chairman, Mr. Taylor, in addition to the difficulties that you agency people are having these days with the Office of Management and Budget, and then your right to appeal to the White House, don't forget your appeal here. We recognize that some cutbacks are going to have to be made, and certainly with the initiatives that the Commerce Committee has taken in deregulation. I would hope that we could indeed justify substantial cutbacks in the budget of your Commission. On the other hand, these are very vital, vital functions. And sometime when we start wielding the budget ax, we get pennywise and poundfoolish.

Thank you for being here.

Mr. TAYLOR. Thank you, Senator. I genuinely appreciate your comments.

Senator KASSEBAUM. I just would like to say again, thank you and thank you to your staff who have been so helpful in trying to suggest ways that we might resolve this issue. We will continue to look to you for counsel and advice.

Mr. TAYLOR. I hope you will, Madam Chairman. It's been a great comfort to us to have been of help and we will continue to do so in any way we can. All you have to do is call on us.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and Members of the Committee: Thank you for the opportunity to appear here today to present the comments of the Commission on the following points: (1) what has happened to the Rock Island's rail lines since the passage of the Milwaukee Railroad Restructuring Act and the Rock Island Transition and Employee Assistance Act; (2) efforts to purchase various rail lines; and (3) ways to address the current problems, including the provisions of S. 1879, the bill to amend the Milwaukee Railroad and Rock Island Railroad Acts.

BACKGROUND

The Chicago, Rock Island and Pacific Railroad Company (Rock Island) operated a major rail system in the midwestern United States. On March 17, 1975, at the time the Rock Island filed for reorganizations under section 77 of the Bankruptcy Act of 1938, 11 U.S.C. 205,[1] the carrier operated a system of more than 7,000 route miles in the States of Illinois, Iowa, Kansas, Missouri, Oklahoma, Texas, New Mexico, Arkansas, Tennessee, Colorado, Nebraska, Minnesota, and Louisiana.

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[1] Section 77 has been repealed by the Bankruptcy Act of 1978, 11 U.S.C. 101 et seq. The former section 77 still governs cases, such as the Rock Island bankruptcy, which were commended under that section before the effective date of the new act.

As contemplated by section 77, the Trustee [2] continued to operate the Rock Island while attempting to formulate a feasible reorganization plan. In August 1979, two unions struck the Rock Island. Shortly thereafter, on September 26, 1979, the Commission found the Rock Island to be "cashless" and ordered the Kansas City Terminal Railway Company (KCT) to provide directed service under 49 U.S.C. § 11125 for a 60-day period over substantially all Rock Island lines.

On November 30, 1979, the Commission extended its directed service order and directed KCT to continue service for an additional 90 days (until March 2, 1980) over a reduced portion of the Rock Island. On February 22, 1980, the Commission further extended directed service for a final 21 days to March 23, 1980, the date the Commission anticipated its directed service appropriation would be exhausted. The ICC orders directing the KCT to provide service were affirmed by the United States Court of Appeals for the Seventh Circuit on October 7, 1981. (*Gibbons* v. *United States-Gibbons II*).

To avoid a transportation crisis when subsidized directed service ceased, the Commission issued permissive service orders to other rail carriers to operate over portions of the Rock Island on a nonsubsidized basis. The permissive orders provided that each carrier and the Rock Island Trustee should negotiate the terms of compensation due Rock Island for the use of its lines, and, if agreement could not be reached, the Commission would set reasonable compensation.

During the period of directed service, on January 25, 1980, the reorganization court ordered the Rock Island to be liquidated on the grounds it could not be reorganized. Subsequently, on June 2, 1980, in accordance with the Commission's recommendation, the reorganization court ordered a systemwide abandonment. Just a few days earlier, on May 30, 1980, Congress enacted the Rock Island Transition and Employee Assistance Act, Public Law 96-254. In general, that legislation provided for: (1) an extension of directed service on the Rock Island; (2) authorization of interim operations; (3) transaction assistance to the purchasers of portions of such railroad; and (4) arrangements for the protection of the employees.

DEVELOPMENTS SUBSEQUENT TO ENACTMENT OF ROCK ISLAND LEGISLATION

1. Purchase negotiations

One of the goals of the Rock Island legislation was to prevent cessation of rail service over liens for which purchasers were available. In its abandonment decision the Commission stressed the need for the Trustee to negotiate the sale of Rock Island lines expeditiously and at reasonable prices in order to preserve essential rail service.

In response to your inquiry with regard to the status of efforts to purchase various lines, I am sorry to report that to date only a small portion of the system has been sold. Excluding the Tucumcari line for which a purchase agreement had been executed well in advance of the court's 1980 liquidation order,[3] the Trustee has sold approximately 230 miles of the 7,000-mile Rock Island system.

Following is a summary of the Rock Island lines approved for sale as of November 30, 1981:

Line segment and purchaser	Mileage	Price
Fordyce to Whitlow Junction, Ark.: Fordyce & Prineton RR	54.4	$1,875,000
Hodge to Alexandria, La.: Continental group	72.8	1,700,000
Trackage within city limits of Iowa City, Iowa: Cedar Rapids & Iowa City R. Co.	7.9	175,000
Hot Springs to Haskell and Malvern, Ark.: Missouri Pacific RR	38.0	2,000,000
Hydro to Elk City, Okla.: State of Oklahoma-Farm Rail	54.7	3,100,000

Although few lines have actually been sold, it is our understanding that negotiations are continuing for the sale of other lines [4] and many lines are being operated under lease while negotiations continue. (See Trustee's Progress Report of Liquidation for period ending August 31, 1981, filed with the United States district Court for the Northern district of Illinois Eastern Division on October 5, 1981). We are of course unable to predict the outcome of these negotiations, but it is clear that purchasers for additional Rock Island trackage are available.

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[2] William M. Gibbons was appointed Trustee in 1975 and continues to serve in this capacity.

[3] The Tucumcari line, which runs from Santa Rosa, N. Mex., to St. Louis, Mo., via Kansas City, Mo., was sold to the St. Louis Southwestern Rwy. Co. (an affiliate of the Southern Pacific) for $57 million. After extensive hearings, the Commission approved the transaction on June 6, 1980; the reorganization court approved the sale on July 31, 1980.

[4] As long ago as September 15, 1980, 19 offers to purchase were of record through I.C.C. filings. To date, few of those offers have resulted in negotiated agreements. (See summary on preceding page.)

The problem, to be expected in any negotiations for the sale of assets, is the price to be paid. The parties are free to negotiate any terms they desire, with no recourse to an outside party should negotiations reach a stalemate. Clearly, privately negotiated agreements are preferred and should be encouraged. However, in various instances, it appears that such a stalemate has been reached. For example, substantial disparities exist between offers and counteroffers exchanged by the Oklahoma, Kansas and Texas Railroad (OKT) and the Trustee, despite exhaustive evaluations by the parties. In the case of the OKT, the evaluation process was a joint effort of OKT management, representatives of the Oklahoma Department of Transportation, officers of the OKT Users Association, and the Federal Railroad Administration of the Department of Transportation. The result of that evaluation was a $45 million offer to the Trustee, which was rejected. The Trustee countered with a $57 million offer that also withdrew a valuable line segment from consideration. This represents a very substantial dispartity between the two offers.

A similar situation occurred when the Norfolk and Western attempted to acquire approximately four miles of terminal trackage they now operate in the Pullman District near Chicago. This line is in an advanced stage of deterioration and has had operations terminated by FRA safety inspectors at least once. N&W estimated the cost of necessary upgrading to be $1.5 million and factored that amount into their cash offer of $1.5 million. The Trustee rejected the offer indicating by letter that he saw "nothing to be gained by any further effort at negotiation . . ."

While the Commission is not in a position to state at this time what it believes to be the actual value of these and other lines under negotiation, it is clear that very real differences exist between the parties. At present, there is no process in effect to help resolve these differences and proceed with the disposition of the properties in other that rail service can be continued.

2. Service orders

Prior to passage of RITEA, the Commission issued numerous service orders, both mandatory and permissive, to ensure the continuation of essential transportation services over the lines of the Rock Island. As above indicated, in the case of the permissive service orders, the Commission directed that the involved carrier and the Trustee negotiate the terms and the compensation to be paid for use of the Rock Island lines. In the event of a failure to reach agreement, the Commission would establish reasonable compensation terms. This is basically the structure established by section 122 of RITEA.

In various instances in pre-RITEA directed service orders, the parties were unable to reach agreement on the compensation issue, and the Commission set reasonable compensation terms.

In most of the proceedings the Commission has adopted the so-called "Frisco" formula to establish the compensation due to the Rock Island. (See Finance Docket No. 29305, St. Louis-S.F. Ry. Co.-Compensation-Chicago R.I. & P., 363 ICC 248 (1980)). This formula establishes compensation at the rate of $1,250 per route mile per year, plus, 14.4 percent of net revenues derived from operations over the involved lines. We have found, and the courts have agreed, that the Frisco formula provides reasonable compensation for the interim use of Rock Island tracks and facilities in most instances, unless specific reasons are shown why some other compensation formula should be used.[5] In light of the actual operating experiences of interim operators, however, we may be revising the compensation formula in the near future.

The Commission was also requested to authorize service and to establish reasonable compensation terms in numerous directed service proceedings pursuant to sections 120 and 122 of RITEA. When these orders were appealed to the U.S. Court of Appeals for the Seventh Circuit, the Trustee alleged that they involved a taking of private property for public use without just compensation in violation of the Fifth Amendment. However, the court found there was no taking under the Fifth Amendment and that the compensation formula was reasonable under the circumstances presented (Decided October 22, 1981, U.S. Court of Appeals for the Seventh Circuit,

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[5] A different formula was used, for example, in a recent Commission decision, served November 20, 1981, involving OKT operations over 777 miles of Rock Island track. The decision was based on the specific eveidence introduced in that case.

Nos. 80-2990, 80-245, 81-1026, and 80-2010).[6] We have attached as an appendix a chart which illustrates by State the Rock Island mileage authorized to be operated by another carrier as of November 13, 1981.

In view of the urgent need for implementation of long range solutions for continued service over Rock Island lines, and in consideration of a recent complaint by the Trustee, the Commission on September 21 served a notice requesting all interested parties to file comments as to whether, and for how long, service over the Rock Island should be permitted to continue, especially where efforts are not being made to purchase or lease the Rock Island lines. The notice also requested information and arguments as to the compensation formula to be used if operating authority is continued over the Rock Island. The Commission is reviewing these comments at this time.

3. Employee protection

On June 2, 1980, when the reorganization court authorized the Trustee to abandon the entire Rock Island system, he also ordered that no employee protection conditions be imposed. However, as you know, on May 30, 1980, a few days before this authorization, RITEA was signed into law.

Section 106 and 110 of RITEA required the Trustee, through the use of high priority federal loans, to provide labor protection benefits of up to $75 million to employees of the Rock Island who might be adversely affected by its cessation of operations. On June 5, 1980, the Trustee and others filed a complaint in the bankruptcy court seeking a judgment declaring RITEA unconstitutional and enjoining its enforcement. After a hearing, a preliminary injunction was issued enjoining the Commission, the Trustee, and the Secretary of Transportation from fulfilling their obligations under sections 106 and 110 of RITEA. A stay of this preliminary injunction was sought but denied. Congress attempted to resolve this problem in the Staggers Act by adding a new section 124 to RITEA. However, the district court ruled that the Staggers Act did not cure the defects of RITEA and continued the preliminary injunction preventing the Commission, DOT, and the Trustee from taking any action with regard to labor protection. These matters were appealed to the Supreme Court, and oral argument was held on December 2, 1981.

COMMENTS ON S. 1879

S. 1879 addresses and would resolve many of the complex problems involved in arranging for continued rail service over lines of bankrupt carriers. It provides procedures for such continued service where other rail carriers are willing to provide service over such lines and financially responsible persons are willing to purchase the lines for continued rail operations.

We believe S. 1879 represents a commendable effort to solve extremely difficult issues. The legislation appears to strike an appropriate balance between the interests of creditors, shippers, and the estate. It also clarifies the Commission's authority to consider applications to purchase portions of the rail system of a bankrupt carrier and to issue orders involving temporary authority over such lines. We believe the proposed clarifications will be very beneficial and will aid the Commission in its attempt to deal with the complex situations which can arise when the public interest requires continued rail service after cessation of operations by a bankrupt carrier, yet the parties involved are unable to reach agreement on a purchase price.

We believe section 4 is particularly helpful. That section establishes a procedure whereby a financially responsible person may resort to the Commission if its bona fide offer to purchase a rail line has been rejected by the Trustee. If the parties cannot agree after a 60-day period for further negotiations, the Commission is authorized to determine a reasonable purchase price which may not be less than the net liquidation value of the line. (We should note that this approach is similar to the procedures available in all other rail abandonments under section 10905 of the Interstate Commerce Act, as amended by the Staggers Act). This decision is binding upon the parties, subject to court review, except that the offering party may withdraw its offer within ten days. The court is to approve the sale so long as the purchase price is not less than required as a constitutional minimum for the line.

We believe this procedure will prove fair to all parties, and it should avoid the type of stalemate referred to earlier in our testimony. Parties who are prepared to pay a reasonable price to purchase lines for continued rail service are assured that they will continue to receive such service. Creditors and the estate are protected because the purchase price cannot be less than required as a constitutional minimum for the line; thus there can be no taking in violation of the Fifth Amendment. Finally, a potential purchaser is protected from being forced to pay a price it cannot afford by being allowed to withdraw its offer within ten days of a Commission decision establishing the purchase price. The creditors and the estate will also benefit from the more expeditious disposition of rail properties which should result from the legislation.

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[6] The remaining case, Appeal No. 2009, challenged Service Order No. 1473, which authorized 16 railroads to use the Rock Island's track and facilities. No compensation determinations were invovled in that proceeding.

CONSTITUTIONAL ISSUES

We understand that constitutional issues with regard to S. 1879 may be raised at the hearing. The principal issue is likely to be whether transactions required under the bill would constitute a taking of property in violation of the Fifth Amendment. We do not believe that Commission intervention pursuant to the provisions of the bill for purposes of facilitating the sale of non-operating lines of a bankrupt carrier would be deemed to be an unconstitutional taking. Even if it were, the constitutionality of the legislation would be preserved, in our view, since the court overseeing the reorganization of the railroad is given the right to upset the Commission-approved purchase price if it finds the purchase price to be less than the required constitutional minimum. A similar provision was included in connection with the transfer of properties of various railroads in the 3R Act, and that provision was held constitutional by the Supreme Court. (See Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974)).

The bill adopts "net liquidation value" as the minimum value to be set by the Commission. In virtually every instance, this will be the appropriate measure of compensation. (See Matter of Valuation Proceedings Under §§ 303(c) and 306 of the Regional Rail Reorganization Act, 445 F. Supp. 994 (Sp. Ct. 1977)). Payment of net liquidation value operates to compensate the railroad fully for its property. Substantial precedent indicates that a railroad line which has been approved for abandonment and which has a history of unprofitable operations has no going concern value, and a person who acquires the line is required to pay only the net liquidation value of the line.

A second constitutional issue that could be raised is that the setting of constitutionally-required compensation is a matter that is exclusively entrusted to the judiciary and cannot be delegated to an administrative agency. However, the Supreme Court has found no constitutional bar to the delegation to determine claims against the United States to an executive officer or an administraive board, and we believe the same reasoning would apply here. In any event, the bill specifically provides for judicial review, and this should vitiate any arguments of this nature.

Finally, it may be beneficial to provide in report language that the Commission is expected to set procedural guidelines that will comply with due process. Athough we doubt that a serious challenge could be raised on this issue specific language of this nature could help deter litigation.

CONCLUSION

In conclusion, we support S. 1879. We believe the legislation is helpful in clarifying our responsibilities and in assisting to ensure that essential rail service is continued where financially responsible purchasers are available and willing to purchase the lines of bankrupt railroads at a reasonable price. In addition, we support the proposed clarification of the period during which Congress intended the Commission to exercise its authority under section 122. Several minor technical modifications are suggested in the attachment to this statement, but they are merely for the purpose of clarification and do not affect the substance of the legislation.

One note of caution. There is presently pending before the Seventh Circuit a proceeding which challenges the Commission's right to assert any jurisdiction over Rock Island property subsequent to the date abandoment was approved by the Court on the ground that its doing so interferes with the exclusive prerogatives of the reorganization court to supervise the liquidation of the Rock Island. If that case were decided adversely to the Commission, we could be foreclosed from exercising further jurisdiction over the property of the Rock Island estate.

We commend the sponsors of the bill for their efforts to develop a workable approach to resolve the current Rock Island situation and other similar problems.

That concludes my prepared statement. I will be glad to respond to any questions you may have.[7]

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[7] Commissioner Gresham asked to be shown as concurring.

ROCK ISLAND MILEAGE AUTHORIZED TO BE OPERATED AS OF NOV. 13, 1981 BY STATE

Service order and railroad	Arkansas	Colorado	Illinois	Iowa	Kansas	Minnesota	Missouri	Nebraska	Oklahoma	Texas	Railroad total
1473—Atchison, Topeka & Santa Fe									2.5		2.5
1473—Baltimore & Ohio			111.3								111.3
1473—Brandon Corp					83.0						83.0
1473—Burlington Northern			22.5	2.1	148.0						172.6
1473—Cadillac & Lake City		96.9			5.0						101.9
1473—Chicago & North Western			6.5	657.7		125.5	147.2	2.0			938.9
1473—Chicago, Milwaukee, St. P&P				81.0							81.0
1473—Chicago Short Line			.2								.2
1473—Davenport, Rock Island & N.W			3.0	1.0							4.0
1473—Fort Worth & Denver										25.8	25.8
1473—Iowa Northern				90.3							90.3
1473—Iowa RR				117.7							117.7
1473—Keota Washington				92.0							92.0
1473—LaSalle & Bureau County			22.3								22.3
1473—Little Rock & Western	54.8										54.8
1473—Louisiana & Arkansas										.5	.5
1473—Missouri-Kansas-Texas									131.4		131.4
1473—Missouri Pacific	54.2										54.2
1473—Norfolk & Western			4.0								4.0
1473—Oklahoma, Kansas, & Texas					319.4		21.1		288.4	121.5	750.4
1473—Peoria & Pekin Union			3.3								3.3
1473—St. Louis Southwestern	69.0										69.0
1473—Toledo, Peoria & Western			8.0								8.0
1473—Union Pacific								36.5			36.5
Total	178.0	96.9	181.1	1,041.8	555.4	125.5	168.3	38.5	422.3	147.8	2,955.6

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APPENDIX

SUGGESTED TECHNICAL MODIFICATIONS TO S. 1879

I. Page 4, lines 18 and 19—the phrase "after at least sixty days but within ninety days" should be deleted and replaced with "within thirty days thereafter." The present wording might be construed to provide an additional 60-90 day period.

II. Page 5, line 11—a sentence could be added stating that the purchaser will not be responsible for employee protection.

III. Page 5, line 6—a sentence could be added providing that the Commission may select among competing offers for the same or overlapping lines if one offer better serves the public interest, provided that the amounts offered by competing parties are not significantly different.

Senator KASSEBAUM. Thank you.

The next witness is William Gibbons, trustee of the Rock Island Railroad estate.

It's a pleasure to welcome you. I am sure you must realize that you were the centerpiece of these hearings. I am very appreciative of your coming to participate in this hearing, and your willingness to try and help resolve this situation. We met for almost 2 hours or more yesterday.

Certainly it is our desire—I'm not just speaking for myself, but I think everyone involved, to try and resolve this without further years of litigation, and of continual frustrated efforts. While your first obligation as a trustee is to the creditors of the estate, we also are all very aware of the potential problems facing the Midwest by a furtherance of the stalemate in this situation. It's to those ends that we are having this hearing, and we are appreciative of your testimony.

STATEMENT OF WILLIAM GIBBONS, TRUSTEE, CHICAGO, ROCK ISLAND & PACIFIC RAILROAD CO., ACCOMPANED BY NICHOLAS G. MANOS, COUNSEL

Mr. GIBBONS. Madam Chairman, I thank you for the opportunity to appear before the committee, Senator Exon. For the record, I have with me on my right Nicholas G. Manos, counsel to the trustee, who will assist me in directing our testimony to some of the procedural issues involved.

I don't think there is much need to go through the history of the Rock Island, as I have outlined it in my testimony. Some of it has been stated this morning. My testimony also involves the history of the operation of the railroad under section 77 for 4½ years, until indeed we ran out of cash and directed service was invoked. And at that point, the creditors had, in fact, subsidized the operation of the railroad to the extent of about $200 million or more in losses during that period of time.

And then my testimony goes into the liquidation procedures and what we have done and what we are trying to do. As you stated yesterday, we did try to to explore avenues which might be utilized in order to move these sales along. I think in the long run, the basic problem here is money, just as it is with the continued operation of the Government and of many, many businesses in this country. In the liquidation of this railroad the problem is money and the obtaining of it on the part of the purchasers.

I have spent several thousand dollars on professional appraisers, both real estate and track structure appraisers, in order to obtain what I considered adequate tools to negotiate these sales. In addition to that, I have on my staff a real estate appraiser, a member of the MAI, which I believe is the appraisal institute.

I also have a track structure appraiser on my staff whose methodology has been reviewed by Ford, Bacon & Davis, one of the country's leading track structure engineering appraisers. And at times I think that my staff appraiser is somewhat more conservative in his appraisal than Ford, Davis & Bacon has been. So it is with these tools that I have proceeded into negotiation on almost each and every occasion.

And what I find is that in many areas of negotiation, the purchaser or the would-be purchaser cannot justify paying my price primarily because the traffic base of a segment upon which the carrier is operating or proposes to operate will not support the payment of a price equal to what I consider at least net liquidation value. I was delighted to hear Mr. Blanchette characterize net liquidation value as a very elusive concept.

I might further reflect on that phrase by saying that in one sale, my net liquidation figure, as conceived by the appraisers, was 100 percent in excess of the net liquidation figure offered by the purchaser. That I find to be so. There's not that big a discrepancy. But that I find to be the case in a great many of these negotiations.

I was pleased to say that in that particular sale I not only exceeded theirs, but also my net liquidation figure. But the problem still remains that this railroad has such a lean traffic base in many areas that it simply does not support payment of a price that may be obtained if I have to dismantle.

Now, as I said to you yesterday and I'm going to say to you on the record, I am avowedly interested in preserving the integrity of these lines for rail use if it does not conflict with the interest of the creditors. My court has mandated me to exert every effort which I am able to exert in order to sell these segments for ongoing continuing rail use. That I am trying to do. I don't know whether the procedure outlined in S. 1879 is going to solve the problem of moving those sales along or not. I rather doubt that it is.

I might point out that in one instance of negotiation where we now have a contract, the carrier is in a position where it may be necessary for the carrier to purchase additional railroad if all else were to stop at the end of his present line. We entered into an agreement with that carrier that in the event that there was no service on the one end of the line, that we will sell him what he needs in the way of trackage in order to obtain a connection with another carrier, and that if we cannot agree on the price because we could not agree on a price at the time we were executing the basic contract, that if we could not agree on a price we would proceed to the reorganization court for the establishment of a value under eminent domain principles. Even though this is a purchase by a private carrier, we both agreed to use those principles.

I might also add that—and I think it has been mentioned this morning, that certainly many of the authorities along the system could, if they wished, institute eminent domain proceedings. I have one proceeding now for an easement out in Colorado. We have been unable to agree on a price there. My appraiser says it's worth twice as much as the sewer district appraiser says it's worth. The sewer district came in to see me and this is what we agreed upon, that because they have a "Quick Take" law in Colorado, which incidentally may pose one of the problems that I see in the Commission proceeding—because they have such a "Quick Take" law, we agreed that the sewer district would deposit twice what it indicates it is able to pay and put that money in my account, and proceed to immediately install the sewer line.

We will then attempt to negotiate the price by conference between our respective appraisers. Failing in that they will institute eminent domain proceedings.

Now, these are facets of the private sector at work, sometimes working faster, I think, much faster than can be expected in proceedings under S. 1879 or any other bill. If I may inject a slight note of levity, I have left with the committee, among other items, two articles on the appraisal of energy, communication, transportation corridors, written by the two men who I think are the leading people in the country. One is John P. Dolman, and the other is Charles F. Seymour.[1] In the one article they say that back in the days when agents representing a newly formed railroad were buying land for right-of-way, they encountered some shrewd bargainers among the Indians. One chief was asked whether he would sell a small, eroded piece of land. "Sure, me sell for $50,000," said the chief.

"$50,000? Why, that land is no good for planting or pasture or anything. It's just no good," the agent exclaimed.

The chief grunted, "Hum. It heap good for railroad."

Now, the point I want to make is that these railroad, energy, transportation, communication corridors are good for a great many uses in addition to that of a rail carrier, and I think that is one of the problems which will surface under a bill such as S. 1879, and that is the inability to separate out the various uses which I think are properties of the estate, and which must be marketed just as the properties must be marketed for continued rail service.

One of the hopes that I have to be able to continue these many segments in continuity as ongoing rail service is the fact that if it appears that I have to dismantle the track, that I will lose the title to the land in such places as Kansas, and perhaps in Oklahoma where the land in Kansas will revert to the abutting owners and the land in Oklahoma will revert to the Indians.

Therefore, it is somewhat important. If I am able to sell these segments for reasonable prices, then I will do so. And certainly, as my court has directed me, I will exert every effort to do so.

I think that I have summarized as best I can the written testimony. And I would be pleased, and Mr. Manos would be pleased, to answer any questions.

Senator KASSEBAUM. Thank you very much.

Senator Exon has to leave, and he would like to ask the first question.

I would also like to say Senator Boren has come in, from Oklahoma, and will be glad to tell you whether it will revert to the Indians or not.

Would you like to come up and join us, Senator Boren?

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[1] The material referred to has been retained in the committee files.

Senator **Boren**. That's quite all right, Senator.

Senator **Exon**. Thank you, Madam Chairman.

Mr. Gibbons, I am surprised that you didn't come in here this morning with one of those striped shirts, with a whistle around your neck, because a referee is in a very difficult position, and I recognize that.

I was very much interested in your testimony this morning—and let me go right to the heart of the matter. The whole system is a concern to all of us, of course. But let me ask you about that segment on the map, there, that is a red line basically linking Nebraska, south. You are in negotiations with the Union Pacific on this. They are presently operating the line, essentially because of the need to get coal to a generating plant.

Could you enlighten me as to what is the status of your negotiations with the Union Pacific, without revealing anything that you should not reveal?

How successful do you think your negotiations with the Union Pacific have been or will be?

Mr. **Gibbons**. I think we are very close with the Union Pacific on Fairbury to Hallum. I believe that's the section to which you're referring?

Senator **Exon**. Right.

Mr. **Gibbons**. My recollection is that I have sent a communication to them in that respect.

We have some other areas of negotiation. They are interested in our trackage to the Goodyear plant in Topeka, Kans., and they have made an offer which we have rejected. I have somebody else interested in that segment, too.

But the point is, in answer to your question, I think we will close that deal with the Union Pacific in the not-too-distant future.

Senator **Exon**. Thank you very much, Madam Chairman.

Senator **Kassebaum**. Before I start my questioning, Senator Boren, would you like to make a statement? If so, we would appreciate it. Just come up and take a seat. We appreciate your coming by.

STATEMENT OF HON. DAVID BOREN, U.S. SENATOR FROM OKLAHOMA

Senator **Boren**. Thank you very much.

I'll be very brief. Mr. Gordon Fay, who is a consultant with the Oklahoma State Department of Transportation, will be presenting some additional testimony later. He is very knowledgeable and will go into more detail, and I subscribe to the statements which he will be making before the committee.

Madam Chairman, I first want to thank you for this opportunity to provide comments concerning the S. 1879, your bill amending the Milwaukee Railroad Restructuring Act and the Rock Island Transition and Employee Assistance Act, to provide for a mechanism for determining a fair price for purchasing rail lines of bankrupt railroads.

It's imperative that a mechanism for arbitrating the differences between potential purchasers and the trustee of the bankrupt Rock Island be put into place as quickly as possible. Continued interim and long-term service over the old Rock Island is crucial to building confidence and good will of shippers utilizing these lines.

As you know, in the north/south line in Oklahoma, as well as the east/west, we carry a tremendous portion of our agricultural production, wheat produced in that area, for example. We have had continual loss of shippers, due to uncertainty as to whether or not this service will be able to be continued. The impact is not only important as to the amount that is now being carried, but its potential to carry even more.

But also, it's very important to maintain that service in order to keep a reasonable rate structure in general, for the shipment of vital agricultural production from that region of our State. That really serves the heart of our grain-producing and agricultural area, as well as an area, both in the north/south and east/west, which is essential in the areas of the new energy production.

It serves areas where we're having tremendous amounts of shipment now of equipment necessary for the deep natural gas drilling in western Oklahoma, in the Anadarko Basin. So it is very critical to us, and it is imperative that we move quickly. It's especially important in light of events of this past week. Another embargo has been placed on the main north/south Rock Island line because of difficulties in reaching agreements with the trustees, concerning further service and the level of compensation.

This continued uncertainty over whether or not service will be provided, from one month to the next, has a devastating impact on shipper morale over the entire line.

Just to summarize—and I would ask that my whole statement be placed in the record, Madam Chairman, I want to commend you for your efforts, and the Senator from Nebraska as well, to try to get this matter resolved.

As has already been said, I know that the trustee is in a difficult situation. We appreciate the cooperation he has shown, particularly with the State of Oklahoma. Agreement has been reached with the State on purchase of a 62-mile segment of track. The State, through the State transportation authority, is participating in the actual purchase of a certain amount of the track. And also, they have been working cooperatively with other lines, who have now made offers—both in the north/south and east/west lines.

I feel that the State government is certainly doing its part. There are willing purchasers, at what I feel are relatively reasonable prices, for both segments. There are of course differences of opinion about what is reasonable.

I advocate setting up the ICC, with appropriate jurisdiction to resolve these matters on a fair and impartial basis, within a reasonable period of time so that we won't have disruption of shipping.

I enthusiastically support your bill and hope it will be approved by the full committee speedily. With the embargo notice going out this week, and with the devastating impact of this potential disruption, time is of the essence.

Senator **Kassebaum**. Thank you very much, Senator Boren. We appreciate your coming.

Your full statement will be in the record.

Senator **Boren**. Thank you for letting me interrupt the schedule of the committee to present these ideas.

Senator **Kassebaum**. I think that your commenting on the uncertainty that exists on the part of the shippers and on the part of potential purchasers speaks to why we are here today. I appreciate your statement.

[The statement follows:]

Statement of Hon. David Boren, U.S. Senator From Oklahoma

Madam Chairman: Thank you for this opportunity to provide comments concerning S. 1879, your bill amending the Milwaukee Railroad Restructuring Act and the Rock Island Transition and Employee Assistance Act to provide for a mechanism for determining a fair price for purchasing rail lines of bankrupt railroads.

I am particularly pleased to be joining you in this effort along with several of our colleagues affected by the bankrupt Rock Island and Milwaukee Railroad Companies.

It is imperative that a mechanism for arbitrating the differences between potential purchasers and the Trustee of the bankrupt Rock Island be put into place as quickly as possible. Continued interim and long term service over the old Rock Island lines is crucial to building confidence and good will of shippers utilizing these lines. This is especially important in light of the events of this past week which has seen another embargo placed on the main north/south Rock Island line because of difficulties in reaching agreement with the Trustee concerning further service and a level of compensation. This continual uncertainty over whether or not service will be provided from one month to the next has a devestating impact on shipper morale over the entire line.

The former Rock Island lines continue to be essential to the movement of huge amounts of agricultural and industrial products, particularly energy related products important to the increased levels of energy exploration that Oklahoma is experiencing.

Although some negotiations with the Trustee have been successful, especially in Oklahoma where the State recently reached agreement to purchase and then lease for operations 62 miles of rail lines, it is time for bona fide purchasers to have the opportunity to reach a fair agreement with the Trustee for purchasing these rail lines. Oklahoma has not been able to reach agreement with the Trustee for purchase of some additional Rock Island lines in our state and in fact the two parties are very far apart in some instances.

S. 1879 will set a definite time-table whereby potential purchasers can expect to have their bona fide offers decided on a reasonable basis after negotiations with the Trustee have failed to reach an agreement. The constitutional rights of the creditors can be effectively balanced against the public interest in continued rail service. This bill directs the ICC to submit its decision to the courts and directs the court to accept the decision as long as the purchase price is not less than required as a constitutional minimum for the line.

Madame Chairman, I want to commend you for taking the lead in this important matter. Your dedication to resolving this problem so that restored rail service will continue to benefit our region is highly commendable. I want to pledge to you my support in these efforts and I hope our colleagues will give this bill their support also.

Senator **Kassebaum**. Certainly, Mr. Gibbons, it is not my intent, or any of the cosponsors' intent, to muddy the waters, but we must find a resolution to this situation. You have commented in your opening statement that you felt that S. 1879 would probably not be helpful.

I would like to know why you don't believe that it would be beneficial.

Mr. **Gibbons**. If I may refer to Mr. Manos, I think he has some comments in that respect.

Mr. **Manos**. Senator Kassebaum and Senator Exon, let me also repeat the appreciation that was offered by the trustee a few minutes ago, in being given this opportunity to appear here before this committee, to solve a problem that is frustrating for all of us.

We share the committee's frustration. We share the frustration of the public interest. And I wish, in just the few moments allotted to me, to demonstrate that this frustration is not a consequence of anything that the trustee is not doing. There is certainly no dereliction on his part of any duty that he has, either under section 77 of the Bankruptcy Act or under any law, and most certainly there's no dereliction of duty under the mandate that he has received from the reorganization court.

I notice that the room is filled with those that support the public interest. We have here what is a classic confrontation between public and private interests, the latter being represented here by the trustee and the creditors.

The trustee feels very lonely here today, just as he has felt very lonely when he was attempting—and valiantly attempting—to protect the public interest by keeping the Rock Island afloat, despite the fact that in 1975, when he assumed the stewardship as trustee, the railroad was one step away from oblivion.

Consequently, I must for the record point to some of the unkind remarks that have been placed in the record here, concerning a supposedly irresponsible trustee who was not fulfilling his fiduciary duties, or some of the other unkind remarks about a judge who appointed his partner. Judge McGarr is not here today to respond. I wish that he was. Since he is not, I must remind the committee that for 4½ years, this judge, through his trustee, strove very valiantly to protect the operation of the Rock Island in the public interest, and to keep Rock Island in the public domain.

Trustee Gibbons was alone, with very little support from the public interest. He did have some support from the individual States involved, but where significant support was required, in terms of rehabilitating the track that requires massive rehabilitation, he got none.

I will never forget the day, Senator Kassebaum—January 20, 1980, when the trustee presented his core reorganization plan that would have preserved public service in your State, Senator, as well as in other important States where the Rock Island operated. Not a single voice was raised to support the trustee's reorganization plan. And Judge McGarr took note of that for the record when he rejected the plan and ordered Rock Island's liquidation.

The FRA, as a matter of fact, insisted that the Rock Island was absolutely nonessential and must disappear. The ICC, although absent at that hearing, had indicated that even if the court reorganization plan was presented, that it would not object to the court rejecting the plan. And I can go right down the line.

So I won't recriminate here, except to say that these are unkind statements. This trustee strove to protect the public interest and not to destroy it. But it seems like bankrupt railroads never die they just continue to be regulated, as I told you yesterday in our brief meeting.

Now let me come now to S. 1879.

Senator Exon is not here, but I appreciated his statement that there are two sides to a story—and most certainly there are two sides. The map that you have in front of you doesn't give the full story. It is full of red marks indicating lines that are unsold. But this is not the fault of the trustee.

The problem is that there is a genuine dispute with respect to price. There just is no money with which to fund the acquisition by so-called financially responsible entities.

Now, who is the trustee dealing with when it comes to financially responsible entities? We've heard—and since OKT is going to testify here shortly, and the Mid-States Port Authority, and they are following us, perhaps something should be injected into the record with relation to those two entities.

Now, I can't understand how anybody can assume, even if this bill was enacted, that OKT is a financially responsible entity that can purchase anything from the Rock Island at the prices that we talk about. The consideration that the OKT has offered to the Rock Island is $45 million to acquire 900 miles of track, included in which is a very valuable 34-mile segment between Fort Worth and Dallas.

The trustee attempted to interest the OKT in excluding this valuable segment from the negotiation, and repeatedly told OKT that successful negotiations might ensue if that valuable segment was excluded, because the OKT really doesn't need it. They have parallel routes that are owned by the M-K-T Railroad, which is its parent.

But despite the attempts made by Mr. Gibbons to have that segment excluded, the OKT insisted, in its final inflexible offer, that $45 million was absolutely the final and last offer for all of the properties.

Consequently, my point, Senator Kassebaum, is that there just isn't enough money available, and the Government is not facing up to the issue.

Mr. Blanchette, the FRA Administrator, I believe very soundly stated that under the present climate, quite obviously Congress is not willing to confess a taking here. And I believe that what this bill, on its face, purports to do is to effect a taking.

Now, his analogy to the constitutional tests that were applied in the matter of the Northeast railroads is an incorrect analogy. We are talking about apples and oranges. In the Northeast corridor situation, may I remind Mr. Blanchette—and he knows that very well—the Government confessed a taking and funded a shortfall. And at this precise moment, those estates are being compensated with Government money.

This is not the case under S. 1879. The Government, as the FRA Administrator candidly admits, is avoiding the taking issue. So, what is S. 1879 attempting to do?

What it does, I respectfully submit, Senator Kassebaum, is to affect private interests, and by establishing a constitutional minimum—which I don't believe is even applicable here—they seem to believe that a constitutional dimension has been solved. It has not. The constitutional minimum which this bill talks about would be very appropo only if the Government would confess that there is a taking here, and that this estate must be compensated.

But without the wherewithall to fund the public interest, I can't see that the OKT, which is not a financially responsible entity, Mid-States Port Authority or other entities that are trying to acquire important segments of the Rock Island, will be able to do and

I can't see that the act provides the proper mechanism to break this roadblock.

Now, it's almost akin—and I see the red light. Do I have any more time?

Senator KASSEBAUM. Go right ahead.

Mr. MANOS. It's almost akin, Senator Kassebaum, to the management of a shoe store—I was thinking of this in discussing it with the trustee this morning—that has a big quantity of size 4 shoes and a lot of size 6 customers, and it hires a strong shoe clerk to fit those 4s into the 6s. You just can't do it.

What you've got to do is provide the money for the purchase of these lines from the Rock Island. Otherwise, I don't see any solution to the impasse.

Senator KASSEBAUM. It seems to me, Mr. Manos, what we have to do is come up with a way to get a fair valuation. This is really where we're at. You say that getting the value is what you feel is important for the estate. Obviously, I couldn't agree more that this is the obligation and the duty of the trustee.

On the other hand, you are saying that there is a potential taking because bona fide purchasers believe the value of the lines is less than what you believe the value is. The question of value is where we seem to have reached an impasse in most of these negotiations.

I would like to ask you how you have arrived at your valuation of the property. And what mechanism you have in place for determining that valuation?

Mr. GIBBONS. Are you speaking now of just the OKT property?

Senator KASSEBAUM. Just in general on the Rock Island properties.

Mr. GIBBONS. In general, I have retained Ford, Bacon & Davis to do the track structure appraisal for me; and have retained the services of a real estate appraiser—Schlays in the north and Bolling in the south. I have the MAI appraiser on my staff. A combination of these people, together with Mr. VanKuyken, who is my track structure staff man. I have obtained values which, as I said before, I use in negotiations.

Senator KASSEBAUM. How do you value lines that really have no commercial value and that would probably be sold for salvage value?

Mr. GIBBONS. When you say "no commercial value," you mean that nobody wants to operate them under any circumstances?

Senator KASSEBAUM. That's right, or there's low interest.

Mr. GIBBONS. Those lines are valued on the same basis as the other. We have to determine the content of the track structure—content being, of course, the weight of the rail. And the rail which can be re-used will be sold as relay rail. That's graded into two grades, 1 and 2; and that rail which is under a certain weight—90 pounds by our standard, is referred to as scrap. That is compared to the scrap prices.

We have the cost of pick-up, because we have a contract with an independent contractor to pick up those segments which will have to be dismantled. So we know what the cost of pick-up will be.

We have certain transportation parameters with respect to the material. There's a certain percentage of the ties that will be re-marketed, a certain percentage which will be buried. Generally the ballast is buried or left intact, and the adjacent property owners will buy it, and they will take into account the cost of reclamation in offering me a price for the roadbed.

That is, in general, the manner in which I arrive at prices to negotiate, particularly such segments as you referred to as "no commercial value." I have to have some idea as to what I'm going to get if I have to pick it up, and this is the way we go about it.

Senator KASSEBAUM. Right now, scrap value is not selling at a very good price. I don't know how you are able to place a value on that property which would be above scrap value, when there is no other use for the property.

Mr. GIBBONS. The contractor has set certain prices in the contract below which a contractor cannot sell without my permission. That means that he may have to inventory some of this material until the prices get better.

We all hope, some of us feel, and some others of us think that we are hitting the bottom of the barrel in this so-called "recession." If that is so, we expect things to get better, and with things come prices getting better, and so on. So we will stockpile some of this material if we have to, in order to avoid, let's say, even a loss on scrap.

Senator KASSEBAUM. You have contracted, I believe, with L. B. Foster.

Mr. GIBBONS. Yes, I have.

Senator KASSEBAUM. The contract is to market the rail that is sold for salvage on lines on which there is no further service or any potential for operation.

Have you consummated any such sales of salvage rail, and if so, how much was that?

Mr. GIBBONS. We have just dismantled our first segment up in northwest Iowa on a line that has not been in use for many years. So we do not have the full experience of having gone through a dismantling and remarketing of the material. L. B. Foster does have a contract with us to pick up loose track material at certain designated locations on the railroad, of which we had quite a bit. I might by example—that example, state that the highest bid that I had for the loose track material on the property was about $1,100,000.

Foster came in and agreed to instead of buying it in bulk, market it for me at a set commission. And I am happy to report that to date they have marketed about $2½ million worth of this loose track material—of which nobody had any idea as to the worth.

Senator KASSEBAUM. About how much is that per mile? How much are we talking about?

Mr. GIBBONS. That's very difficult, because this was not installed material. This was material which was lying around in yards, on many occasions along the right-of-way, in storehouses, and so on. So it was not installed, and therefore I cannot give you a per-mile value.

Any per-mile value is going to vary with respect to the content of the mile. In other words, if it's all 85-pound rail, you know you are going to sell it for scrap. If it's 110-pound rail, you know you are in all probability going to be able to sell it for relay rail. We will have one segment which will be dismantled, and I believe the relay rail in that segment has already been sold before it ever got out of the ground.

It had to be at prices which were stated in the contract, or above those prices.

Senator KASSEBAUM. You suggested the use of the power of eminent domain as a possible means of arbitrating differences between seller and purchaser in the valuation of property. In what forum do you think these proceedings would take place?

Mr. GIBBONS. It can take place in the forum of proceedings before the reorganization court. Primarily, this is where it has taken place. And I think we cited examples yesterday of the state of the city of Dallas, wherein it needed some property for its new sports arena and it was ready to file condemnation proceedings when we agreed on a price. The sewer district in Colorado is going through the same thing. So that those proceedings would be before the court.

Now, the RTA in Chicago, the Regional Transportation Authority, was unable to arrive at an agreed price with me. And it filed for leave in the reorganization court to file an eminent domain proceeding in the State court. The reorganization court thought that the case had better be left with the reorganization court. One of the reasons is that our court, I think, is very familiar with the values in this estate, and in the RTA's instance, we have a freight carrier, the Chessie, which is operating over part of the property that the Regional Transportation Authority seems to condemn.

So therefore, having both of those entities in the same court facilitates a solution to a problem which does exist there, and that is how much of the yard, for instance, at Joliet can the Chessie have, or how much does the RTA really need. These are pressing problems in this Chessie lease, which I have just signed and which is to be sent to the reorganization court for approval in the next week or so. But that's before the court, and the court has the advantage of having everybody and every issue before it in order to make a proper decision. You have instances where eminent domain proceedings involve the law of the particular locale, the particular State, and I am not sure the Commission is at all capable of determining the various eminent domain principles.

I might point out, too——

Senator KASSEBAUM. Pardon me, Mr. Gibbons. Why don't you think it would be?

Mr. GIBBONS. I don't think the Commission is set up to determine the applicable jurisdiction law with respect to these items that we are talking about. I am talking about eminent domain now. If we were to go——

Senator KASSEBAUM. But you feel the reorganization court would?

Mr. GIBBONS. The reorganization court is the U.S. district court, which historically has been able to apply the law of every jurisdiction in this country, no matter where that court sits.

I would also point out, Senator, with respect to the time factor, whether they scale it down to 75 days from its present 195 days, which I think I counted in the statute, or 90 days, or whatever, I am mindful of what I think was the New Haven inclusion case, which went from the Commission, which had to determine valuation to the Supreme Court of the United States, I think, three times, wherein the Supreme Court sent it back to the Commission and said, you still haven't figured out the right value.

Now, these are very complex problems, I know. In that case, they were trying to determine what part and what value that particular carrier played in the whole Northeast problem.

But I think we have got the same problem with respect to the Rock Island in miniature, that is, how are we going to determine these values in this fashion before a Commission which I think is bogged down with millions and millions of procedures right now.

Senator KASSEBAUM. This again goes back to what we seem to always end up with. That is the issue of who is going to be able to give us a valuation estimate that we can agree upon? What might seem fair to the other sid doesn't seem fair to you and vice versa.

You mentioned that the Government is not willing to participate in this procedure. What do you think would be a fair amount of Government participation?

Mr. GIBBONS. The Government, I think, is going to have to participate if there is going to be a preservation of some rail service in these areas. It's going to have to participate by subsidizing the shortfall which is involved here. I think in my negotiations with Mid-States, it appeared that regardless of what the net liquidation value would have been, that the traffic base which they protested was so lean, they could not support a price that I was asking. All they could support was the price that they mentioned, that they offered, and while they did state that the price that they had offered was in excess of their net liquidation value, it was woefully short of the value which I have in my file.

Mr. MANOS. Senator, may I address the question of eminent domain?

Senator KASSEBAUM. Yes.

Mr. MANOS. Quite obviously, what S. 1879 is attempting to do is to place in the Interstate Commerce Commission the decisionmaking power with respect to what is akin to an eminent domain court.

The problem that we have there is that when the applicant, for example, is the OKT, or even the Mid-States Port Authority, that what the Commission is being asked to do is to attempt to fit the economic requirements of these particular entities or others to the public interest, and perhaps at a loss or damage to the estate.

The same problem might exist with respect to eminent domain even as a vehicle before the court. If the OKT, for example, was to file eminent domain proceedings and ask for the properties, and if the court, for example, was to find that the OKT's valuation was wrong, and that the valuation should be considerably more than what the OKT is offering, then we have the question, again, of whether the OKT has any ability to meet that valuation price which it quite obviously does not have.

The obvious solution, then, with respect to this dilemma, whether it's handled by the Interstate Commerce Commission or by the court, is a public funding of the shortfall. It's absolutely unavoidable.

Let me summarize what my opinion is with respect to the constitutional aspects of the bill so that it's clearly stated in the record. What S. 1879, in my opinion attempts to do, is to affect the private rights of the parties, ostensibly in the public interest, but without making any provision for the funding for the public interest. Quite obviously, the OKT cannot afford to pay what ultimately might be a valuation established either by a court or by the Interstate Commerce Commission.

What does the public interest do then? Do we go through a long, tedious drill, even assuming for the purpose of argument here that the act is constitutionally supportable? Do we go through a long drill, then, of a valuation proceeding with the court reviewing it, and perhaps finding that the constitutional minimum has not been achieved? And where are we at the end of this drill? We're right back to square one.

So it's a question, then, of public funding. Now, the solution does not lie here with the trustee. The solution lies with Congress in coming up with a different solution other than the one presented by S. 1879. And I assure you, Senator Kassebaum, if money was not an issue here, the problem would disappear very rapidly.

Let me address some of the matters that the other witnesses addressed with respect to the commerce powers that Congress has. Admittedly, it does. It has broad powers under its commerce provisions to go ahead and do what it is trying to do here, but within constitutional limits. Could it be said that the Congress, if it felt that General Motors should not produce any more cars and that its cars should be produced by Ford in the public interest, then dictate a sale of all General Motors assets to the Ford Company? It could not do so. It would be arranging private interests for a private benefit unless it acknowledged a taking in the public interest.

And I submit respectfully that there we have a constitutional infirmity that I believe will fail to accomplish the expedition which is the motive of the act. Rather, we are going to go into a long foray again just as we did in labor protection, which has yet not been settled, of trying to decide whether we are within a constitutional dimension.

I fear that S. 1879 is constitutionally infirm unless the takings issue is settled by the bill, and unless the Government comes up in these small instances where the public interest apparently is so important with a public funding so that the OKT can acquire these, and acquire it and still be able to make a profit—the OKT is not in this business to serve the public interest as a loser.

Certainly, the Constitution doesn't mandate it to do so. It has to acquire this property and make a profit if it can. Now, the State of Oklahoma—and I was very happy to hear the Senator from Oklahoma make this statement—was very innovative here. They addressed the issue. And they said that Farmrail which was unable to reach the trustee's price quite obviously was not constitutionally mandated to put up that price and lose money.

So the State of Oklahoma did it. They put up the money. Similarly, they could exercise the rights of eminent domain, any of these States—the State of Kansas can do it for the Mid-States Port Authority, and buy this property, and then lease it back to the Mid-States Port Authority, who could then afford to run it, because it doesn't have the capital to make the initial acquisition.

So it appears to me the public interest has to fund it. S. 1879 does not provide the funding mechanism, in my opinion, and I state this respectfully. Unfortunately, it does not, and I would ask you, Senator Kassebaum, and your committee, to examine this very carefully so that we don't make a mistake of a long and tedious foray again into constitutional dimension which will fail to achieve our purpose.

Senator **Kassebaum**. I don't want to be involved, as I said, in lengthy litigation that will put any solutions further down the road. But, I would respectfully disagree with you that the question of public interest is the sole concern of the ICC, nor is it our sole concern.

Obviously, that's a factor. It seems to me at this point that there is almost an effort on the part of the estate to see how much the Government might be willing to pay in assisting this liquidation and in these purchases, whether it's the Federal Government or the State governments. This goes back again to setting a valuation price that is reasonable and fair, not how much can be extracted from the Government. I think that this is a very important issue apart from the public interest issue.

Mr. **Gibbons**. We are not insisting that the Federal or the State or the local governments put up this money; we are only suggesting that—let us assume for a moment that my price is not unreasonable, and that the offering price is. And let us assume for a moment that the offeror says, "OK, I will accept your price."

In many instances, they do not have the wherewithal to buy. The OKT couldn't buy now if they——

Senator **Kassebaum**. All right. Who else can? You don't have competitive bids on that line, do you?

Mr. **Gibbons**. That was the only suggestion that was made by us, was that in some instances the State or the Federal Government may have to provide the shortfall.

As I understand, OKT, they are relying completely upon either the shippers or the FRA or the State of Oklahoma. Mid-States Port Authority is not. Mid-States Port Authority intends to issue industrial revenue bonds and get some money from the FRA. We have a little outfit up in Iowa which has agreed on price with us and has done all the fighting that it can do before the Commission, has been asked to resubmit at least two to three times before the Commission. We finally got from the FRA from which it needs the funding the very nebulous letter that indicates they really aren't prepared to fund at this time, because they really don't know what they are going to be able to fund with, and that's only a $4 million sale.

Senator **Kassebaum**. Your responsibility is to get this sold and the creditors paid.

Mr. **Gibbons**. Yes.

Senator **Kassebaum**. Have you made an overall evaluation of what you feel you can get for scrap value without unrealistic estimates and also, what you can get for the sale of those lines where there has been a bid made by bone fide purchases and put it all together to see if you come out with a package that's going to be able to satisfy the creditors?

Mr. **Gibbons**. I think if I were to sell at what I would call the distressed prices that you are now mentioning, that we would be short of what we would have to get in order to pay the creditors.

Senator KASSEBAUM. How much?

Mr. GIBBONS. I can't even give you an estimate now. The reason why I can't give you an estimate is because there really aren't—there's several negotiations pending. There are several prices flying around, and I haven't dollarized the lowest possible minimum against a middle, against a high. I did quote a high which I really don't care to quote now, to somebody that would express mild interest in possibly purchasing the whole system, and I got together a very quick, what I would call a very—the highest ballpark figure that I could get. And it was a very substantial figure.

I do have in the file the net liquidation value of the entire system. But then since that figure was compiled, there have been sales, there have been negotiations, and so I do not have the answer that you ask.

Senator KASSEBAUM. Have there been expenses against the estate? The September income statement that you filed with the reorganization court indicates the State had expenses totaling $2.7 million. That's cumulative through the year?

Mr. GIBBONS. That's through the month of September. I think you will find most of that was depreciation.

Senator KASSEBAUM. Of that amount, $156,000 is attributed to the expense of the trustee.

Mr. GIBBONS. That's correct. Included in those expenses are the expenses of the appraisers and the consultants. We have an allocation of expenses by cost centers and many of the—in fact, all of the appraisers' expenses are attributable to me.

Senator KASSEBAUM. What is your annual salary as trustee?

Mr. GIBBONS. I do not have a salary. On two occasions each year, I apply to the court for compensation.

Senator KASSEBAUM. And what is that?

Mr. GIBBONS. What has it been?

Senator KASSEBAUM. Yes.

Mr. GIBBONS. $180,000 a year.

Senator KASSEBAUM. What is the annual budget for legal fees for the estate?

Mr. GIBBONS. You're speaking of outside counsel?

Senator KASSEBAUM. Outside or inside.

Mr. GIBBONS. Inside, I have a house staff of seven attorneys. Under them are the claim agents, also the tax people, and so their budget is probably close to three-quarters of a million dollars. I don't have those figures with me now. Had I known you wanted to know that, I would have brought them with me.

Mr. MANOS. May I address those issues, Senator Kassebaum?

Senator KASSEBAUM. Yes.

Mr. MANOS. I believe I know what you would like to know here. You'd like to know about the fees paid as costs of administration——

Senator KASSEBAUM. It's a question many people have raised.

Mr. MANOS. Quite obviously, so let me address it.

Judge McGarr, from the very outset of the administration of this estate, has been extremely sensitive to costs of administration. Quite obviously, when this case was filed, it had the potential of being the largest liquidation of any railroad, exclusive of the Penn Central.

Penn Central, of course, had no problem. In one stroke of the pen, Penn Central transferred all of its assets to Conrail, all of its rolling stock, all or substantially all of its right-of-way, transferred its labor and whatever problems it had with respect to labor protection.

So Mr. Blanchette, when he was serving as trustee of the Penn Central, didn't have the problems that this gentleman on my left has. After the arduous process of attempting to preserve the public interest for 4½ years, we then went into a lengthy liquidation process.

Unfortunately there was no model for this liquidation. This trustee had 28,000 cars or more spread all around the system after the KCT surrendered the properties to him. He had a 7000-mile-or-more system to liquidate—not to transfer as was done in the Penn Central case to Conrail, but to liquidate and to parcel out piecemeal.

The problem is massive in terms of the level of costs of administration, and this is documented. The Rock Island situation, however, has been a model of economy. There has been no waste, and this is something that Judge McGarr has watched very carefully, especially being sensitive to the fact that he has been accused in this particular interest of appointing a former partner.

The reason Judge McGarr did this—and it's in the record of the court proceeding, and let me repeat it here today so that the public can hear it—Judge McGarr made a statement for the record that when he considered the question of the appointment of a trustee, he had many, many candidates that were presented, most of whom were not known to him, and he made the decision that he was going to appoint somebody that he knew extremely well, knew his capabilities and that didn't have to be tested, knew his honesty and integrity, and consequently he appointed Mr. Gibbons.

And if anybody takes any issue with that, let them step forward. Judge McGarr has repeatedly defended his appointment, and has done so with ample justification.

Let's get back to costs and perhaps legal costs. I would be the happiest man in the world if this administration was to end tomorrow by some appropriate mechanism or legislation that would put me back 100 percent in my law practice where my specialty is bankruptcy and reorganization. In the present climate, as you know, Senator, unfortunately we have a rampage of bankruptcy filings, so that the small fees that are attributable to my area as counsel for the trustee are something that if I were out in the private sector and away from this case, would triple and perhaps quadruple.

I accepted this case and the challenge voluntarily. I did so, and I will stay with this man so long as the court and Mr. Gibbons desire my representation. But I can tell you quite frankly that this has been done at a sacrifice. I'm not complaining, but I'm only stating to you, Senator Kassebaum, and to the committee that if you compare Rock Island to other railroad administrations, you will find that this case has been a model of economy.

But this doesn't address the real issue here. Where do we go now, and what is the appropriate mechanism? And this is what trustee Gibbons is desperately trying to explore with you here today. We are not here to recriminate about the past but only look to the future and see what we can do here.

Senator Kassebaum. I appreciate that I don't believe that the public interest is served if lines are sold to purchasers who do not have the wealth and stability to maintain those lines.

What we want first is a viable, solid rail transportation system, in addition to your desire to satisfy the creditors. It doesn't seem to me it should go beyond that.

Now I would like to go back to competitive bidding. There's not much of that going on is there?

Mr. Gibbons. There is, and it's very spirited at times.

Senator Kassebaum. Well, that's good.

Mr. Gibbons. May I interject——

Senator Kassebaum. You did mention that there had been an offer of $12 million, I believe, for a line that would run from Colorado Springs through to Kansas.

Mr. Gibbons. Are you talking about Mid-States? Mid-States doesn't go that far. Mid-States, I believe, has its terminal—there's 450 miles of the Mid-States desired segment, 265 of which is in Kansas and the balance in Colorado.

Senator Kassebaum. You have said that offer is inadequate. Has there been any other offer on that line?

Mr. Gibbons. Senator, there are other, let's say, miscellaneous offers. It is inadequate in view of what my file indicates I can get if I have to dismantle it. I can't give away——

Senator Kassebaum. You can get at least $12 million for scrap value for that segment of the line?

Mr. Gibbons. Senator, my file indicates I can get well in excess of $18 million, and I have valued the land in Kansas at zero. The reason why I have done that, as I think I explained, is because under the Kansas Supreme Court decisions, a railroad having a right-of-way under certain circumstances in Kansas is deemed only to have an easement for the use of that property for rail purposes, and if it dismantles the track, it loses its title to the abutting owners. So in that evaluation which I have, which I have discussed with Mr. Boyd and Mr. Willis on many occasions, I have zero for the land in Kansas.

I still have a value well in excess of $18 million——

Senator Kassebaum. It would be zero even if you sold for salvage value.

Mr. Gibbons. No. In that respect, let me say this. My real estate people have been engaged in selling considerable parcels of land, and they have to parcelize these rights-of-way when they are abandoned and dismantled in areas where our title is less than fee—in most instances, easement property, because by court decree it would revert, if necessary—would revert to the abutting owners.

In many of those instances, I'm getting prices of as high as $1,150 per acre for a quitclaim deed, where admittedly I have no title to the property on a dismantling. There's no question about it.

We just completed sales down in Louisiana where—they call it something by suffrance with respect to the railroad. I have no title, but they paid me $1,050 an acre down there. I've gotten as low as $500 an acre for this type of a sale.

What I'm saying to you is that my file, with its value in excess of $18 million, shows zero for the Kansas land. If I have to dismantle the rail and market it and market the ties and sell off the property, I know I'm going to get something for that land in Kansas. Maybe it won't be what we would call across-the-fence value if you have a fee title to the property.

Mr. **Manos**. There's another element to this, Senator Kassebaum, aside from the liquidation values attributable to the dismantling and the sale of the separate parts, and I don't believe that the record is complete here today unless this statement is made.

The trustee is in receipt of very serious offers here that deal with nonrail use. The bill, S. 1879, has the avowed purpose of protecting the public interest through continued rail use, and this is laudable. But it doesn't fully explore the asset values that an abandoned railroad can achieve through the liquidation process.

Consequently, since the order of abandonment has been entered and since the liquidation process is now moving forward and the courts have stated that the reorganization court quite properly ordered the abandonment under Brooks-Scanlon and all of the other cases that deal with the rights of creditors, now that this process is going forward, this trustee has a fiduciary duty to achieve the highest and best prices. And in so doing, he is examining other areas of potential realization of value for nonrail use in conjunction with rail use.

And perhaps this is one solution in your particular State with the Mid-States Port Authority. I'm sure the trustee doesn't wish to open this up to public discussion; perhaps this can be done in camera.

There are people that are looking for transmission lines for energy and communications throughout the entire system and possibly through the line that the Mid-States Port Authority wishes to acquire for continued rail use. Perhaps an accommodation can be reached there so that the spread between the $20 and the $12 million can be narrowed by values that are achievable from other sources for nonrail use. And this is precisely what trustee Gibbons is examining right now. His door is never closed; it was never closed to the Mid-States Port Authority, and he assumes at this moment that negotiations are still open.

But my point is, that S. 1879 does not explore for the estate anything other than values attributable to rail use. There, I respectively submit, is another defect that only the court through its trustee can really unravel. The various interests of the estate to which it is now entitled as a consequence of the abandonment.

Mr. Moritz is here on behalf of the First National Bank, representing all of the creditors of the estate. Perhaps he can throw some additional light on this.

I must say, as far as the trustee and the creditors are concerned, that their objectives are common—the realization of the highest and best values for the estate, be it through continued rail use or for any other use. And consequently the distribution to creditors has been delayed as a consequence of the impasse on valuation and sales price. It's been also delayed as a consequence of the other foray into the constitutional dimension on the labor protection issue, and certainly they are as frustrated and disappointed as you are, and as we are.

Senator KASSEBAUM. Have you figured labor protection costs in your valuation of the property?

Mr. GIBBONS. In the valuation? No, I have not figured it in the valuation. You see, the very issue of whether or not this estate is liable for labor protection has been argued before the Supreme Court as of the first part of this month, involving the Rock Island Transition Act. Hopefully, we will have a decision sometime early next year that will, we again hope, forever solve the problem of whether or not I am liable to pay labor protection.

Now that has been one of the main factors which has prevented me from filing any kind of a plan. I cannot file a plan treating with the creditors until I know the the extent of their claims. I certainly have no idea right now whether this estate is liable or not for the payment of labor protection. If it is liable, is it going to be liable to the extent of the $75 million which is the amount stated in the Rock Island Act, or will it be liable to a further extent under the Commerce Act, section 11347?

I don't know whether it will be or not. And therefore it is impossible for me to treat with all of the creditors now, because I don't know who all the creditors are.

I have three main segments which need to be sold. One is the Sunbelt Line. I have been negotiating with the A-OK, they call themselves; that's Arkansas-Oklahoma combination. Mr. Gordon Fay, the consultant whom I think is testifying, may enlighten us further on that. They have avowedly been dealing with the Santa Fe to lease the property to the Santa Fe upon an acquisition from the trustee.

It is my understanding, these negotiations are still ongoing. When we last broke off, which was sometime over a month ago, my understanding was that I would hear from Mr. Fay and his associates in the very near future, because the Santa Fe was to be the subject of the conversation.

Now the Santa Fe meanwhile has not done anything, as far as I know, about getting together with A-OK.

Let me say this. There's a little quirk in the Tax Act which Congress just passed which was pointed out to me the other day, and it may have some bearing on the present problem of people not wanting to buy. It's my understanding that act, which permits railroads to depreciate, to write off formerly nondepreciable property, which was their track structure—that act permits them to do so within a period of 5 to 50 years. In other words, they may choose the 5-year period upon filing their income tax for 1981, or they may elect to take anything up to 50 years. This is a great vehicle for a railroad in its acquisition of property. While it may make its earnings look somewhat bad, it will be of great assistance to its cash flow.

Now the Chessie pointed out to me that they could not buy the property that they have entered into a lease with me for. The reason they cannot buy it is because under the law, anybody who has ever been in possession of this formerly nondepreciable property is disqualified from writing it off if it later acquires the property.

I know that's not the problem of this committee, but I wanted to point out to this committee that that problem may exist, because his suggestion to me was, I may have to enter into a lot of long-term leases. And I said, "I'm not interested in long-term leases. Your lease has not been approved yet"—the Chessie's lease—"and I don't know what the creditors and the court are going to say about it. But suffice it to say, I'm interested in cashing out, the estate paying off the creditors."

But I did want to point that out to the committee.

May I correct what I think also may be somewhat of a misimpression, and that is with respect to my compensation?

I practiced law for 30 years before I was appointed to this job. I think from my knowledge of myself and my capability, that if this job was terminated tomorrow, that I am capable of making a very fine living somewhere else.

Senator **KASSEBAUM**. I'm sure there are days you wish you were.

Mr. **GIBBONS**. There are many times that I wish I were.

Senator **KASSEBAUM**. Thank you, Mr. Gibbons.

Mr. Manos?

Mr. **MANOS**. I hope we've fully explored all the problems. If there are any further questions to be propounded to myself and the trustee, we're here in the hearing room.

Senator **KASSEBAUM**. Thank you very much.

[The statement follows:]

STATEMENT OF WILLIAM M. GIBBONS, TRUSTEE OF THE CHICAGO, ROCK ISLAND & PACIFIC RAILROAD CO.

Mr. Chairman and Members of the Committee: Thank you for the opportunity of appearing before you in connection with S. 1879.

On March 17, 1975 the Chicago, Rock Island and Pacific Railroad Company, for the third time since 1917, sought protection under federal bankruptcy laws and filed a petition for reorganization under Section 77. This action was the culmination of the ill-fated Union Pacific-Rock Island merger proceedings which had labored through 11 years of hearings before the Interstate Commerce Commission. Approval of the merger in late 1974 was so beset with conditions unacceptable to the U.P. that it declined the merger. By that time the Rock Island System had deteriorated to an intolerable physical and financial condition.

I was appointed trustee by U.S. District Court Judge Frank J. McGarr (now Chief Judge of the Northern District of Illinois, Eastern Division) shortly after the commencement of the reorganization proceedings.

Under the protection of Section 77 and appropriate orders of the reorganization court, I operated the railroad in the public interest for 4½ years. An estimated $250 million was required for rehabilitation of the road bed which I actively sought from the Federal Railroad Administration under the Emergency Rail Service Act. The FRA offered and I was only able to borrow $17.5 million. This sum, together with internally generated funds and Iowa State and shipper-funded track project loans, was woefully inadequate to accomplish the re-building job.

We were able to acquire by lease 68 new locomotives and over 5,000 new freight cars. A car rebuilding program was begun in 1977 with 4-R-Act funds. Locomotive power and rolling stock was consequently more than adequate. The condition of the road bed plagued us, however, and made it increasingly difficult to maintain competitive schedules. Finally, our meager cash was drained by the onslaught of the worst winter of the century (1978-1979), double digit inflation which began in late 1978 and exploding fuel prices (from 40¢ to 90¢ a gallon in the first few months of 1979). This crisis was climaxed by a strike called by BRAC and UTU in August, 1979. As mandated by law, I attempted to continue service and to operate with management personnel. After 35 days the cash ran out and the ICC invoked directed service, placing the Kansas City Terminal Ry. Co. ("KCT") in possession of the property in October, 1979.

There immediately ensued hearings before the reorganization court on a petition to compel liquidation. I was given leave by the court to file a reorganization plan in December. A comprehensive plan was filed and embraced an operating 2,000-mile core railroad centered primarily in Illinois and Iowa, with the balance of 5,500 miles of right-of-way to be liquidated.

On January 25, 1980, the court rejected the plan as unfeasible and ordered me to liquidate the properties of the estate in the interest of the creditors. At this point in time creditors had subsidized the public interest over a five year period to the extent of over $200 million in operating losses.

Accepting the court's mandate, I immediately reorganized my staff and work force of about 600 persons to commence the liquidation process. The project was immense, considering that at the end of directed service which occurred in March, 1980, I had to be prepared to receive for ultimate disposition over 28,000 leased and owned cars scattered over the entire country, as well as to care for and preserve a 7,500 mile railroad property, much of which would no longer be operated. By way of comparison, the liquidation of the Penn Central and other northeast corridor railroads posed no problem for their trustees, since the conveyance to Conrail, in a single instant, solved all the problems of disposing of rolling stock, right-of-way and railroad equipment.

By attrition and position termination, my work force now numbers 215. I have been fortunate to have been able to retain a staff of knowledgeable people who have adapted readily to the difficult task of selling off, in pieces, the nation's 11th largest Class I railroad with the objective of satisfying over $400 million in debts. To assist in this "first of a kind" mammoth project, I obtained approval of the court for the retention of independent contractors for the sale of rolling stock, maintenance and operations work equipment and collateral real estate.

I was able to negotiate an advantageous package sale of 220 owned locomotives, together with all the inventory of parts and 80 acres of locomotive repair facilities at Silvis, Illinois. Most of the 440 leased locomotives have been returned to lessors. Leases on 19,865 freight cars were terminated or re-marketed. The bleak market for freight cars hopefully has hit bottom, with close to 200,000 idle units throughout the industry. This has impacted on my ability to sell our owned fleet of 8,700, of which 1,550 have been marketed. Over 400 wrecked cars had to be removed from right-of-way ditches where many had lain since prior to the bankruptcy.

Some 1,900 units of maintenance of way and operations work equipment and automobiles are being marketed or scrapped. Several millions of dollars worth of inventory, office equipment, loose track material, furniture and memorabilia have been sold at public auctions or private sales.

Collateral real estate and abandoned right-of-way has been parcelized and sold for over $16 million to date. A program of marketing permanent crossing and parallel easements for communications and transmission of commodities such as oil. gas and coal slurry via pipeline has been organized and is under way. Several million dollars of deals are pending closing and in negotiation.

At the outset of liquidation, I received numerous expressions of interest for purchase of track segments to be used for rail carrier purposes. My first objective which has been accomplished, was to reach agreement with carriers who desired to continue rail operations on Rock Island's properties after their surrender to me by the directed service carrier KCT. My staff and I were able to negotiate interim lease agreements with almost all carriers who had expressed an interest in ultimate acquisition. Only two or three carriers operating on small segments failed to reach agreement with me and opted for ICC setting of compensation. My negotiations with many carriers for ultimate sale have met with significant success. In addition to the sale of the 1,000 mile Tucumcari-Kansas City-St. Louis line to the Southern Pacific ("SP") which was consummated for $57 million since the liquidation order, other segment sales consummated or in progress are:

Missouri-Pacific: Malvern-Hot Springs, Ark. (40 mi)	$2,000,000
Missouri-Pacific: El Dorado, Ark. switching terminal (0.2 mi)	200,000
Fordyce & Princeton: Crossett-Fordyce, Ark. (54 mi)	2,600,000
Cedar Rapids & Iowa City Ry.: Iowa City-Hills, Iowa (7 mi)	175,000
Keokuk Junction R.R.: Keokuk, Ia. yard trackage (4 mi)	325,000
P.&U.RR.: Pekin, Ill. yard trackage (2,8 mi)	170,000
Continental Group: [1] Hodge-Alexandria, La. (25 mi plus trackage rights and yard)	1,700,000
Royal Manson Shippers Association: [2] Royal-Manson, Iowa (55 mi)	4,350,000
State of Oklahoma: Hydro-Elk City, Okla. (62 mi)	3,100,000
Little Rock & Western RR.: [2] Perry-Pulaski, Ark. (44 mi)	2,700,000

North Central Oklahoma RR.:[2] Ponca City-Enid, Okla. (44 mi); Anadarko-Mangum, Okla. (79 mi)	4,500,000
Te-Ce Corp.:[2] ACR Line, Tex. (9.7 mi)	2,450,000
Baltimore & Ohio RR.: Chicago-Bureau, Ill. (72 mi plus 25 mi trackage rights)[3]	([3])

[1] Awaiting closing.

[2] In various stages of awaiting ICC recommendation, FRA financing, and final court approval.

[3] Long-term leases.

All of these negotiations involved an immense amount of work from the standpoint of both the seller and buyer and were accomplished in an atmosphere of a free and competitive market. The complete sales and ongoing negotiations entailed an average of 15–20 meetings per month with the prospective purchasers, as well as host of in-house preparatory sessions.

In addition to the foregoing, I am in various stages of negotiation with the Burlington Northern, Norfolk and Western, Chicago and North Western, Cotton Belt, Missouri-Pacific, Union Pacific, Chicago Short Line, Mid-States Port Authority, Chicago Port Authority, Centrail, Santa Fe/State of Oklahoma, as well as with several short line railroads and shipper groups. Right-of-way mileage involved in these ongoing negotiations totals close to 3,000.

I have spent several thousand dollars for professional real estate and track structure appraisals in order to equip my staff and myself with the proper basis of negotiation. An MAI real estate appraiser is employed on my staff, as well as a track structure appraiser whose methodology has been approved by Ford, Bacon & Davis. I consequently have confidence in my asking prices. In connection with the dismantling of segments in which no interest has been expressed for continuing rail use, I have contracted with L. B. Foster Co. for the tear up and marketing of track materials. My staff has counselled with Foster concerning cost and market and has utilized their advice in the preparation of our valuations.

Understandably, not all potential buyers accept the prices that I have placed on the properties which they seek to acquire. Some of these entities are Oklahoma, Kansas and Texas Railroad Company ("OKT"), the Regional Transportation Authority ("RTA"), Mid-States Port Authority and the Chicago and North Western.

I have often been criticized for rejecting offers that are above the per-mile price paid to me by the SP for the Tucumcari line. It should be noted from the above and foregoing schedule of sales that there is no consistent shelf inventory price for a mile of railroad. Each segment is somewhat unique insofar as its traffic, composition of track, condition of roadbed and materials and real estate values are concerned. In addition, I must point out that inflation of over 40 percent has occurred since the SP contract was signed. The fact of the matter is that the traffic base and cost of rehabilitiation of some segments will not support the price which they could bring after dismantling.

Allegations that I am comfortable with high rentals and am not anxious to sell, border on the ridiculous. The ICC has recently deemed a 12 percent return on capital as adequate for railroads. We all know that investment in government securities has yielded a significant 17 percent in recent months. It is safe to say that I may be receiving a 5 percent return on the value of property which is under lease today. There should be no reason for the estate's creditors to continue to subsidize in the public interest in this manner long after the courts and the ICC have determined that the Rock Island is not essential to the national transportation system and have approved its abandonment and liquidation.

Most of the foregoing data is documented in exhibits which I have separately delivered to the Committee. Among the exhibits are copies of my most recent report to the court, copies of the negotiation status with potential rail purchasers, and two articles on the valuation of transportation/communication corridors.

I now address the legislation proposed by S. 1879. I do not question the motives of those who have introduced the bill. I recognize and share the disappointment and frustration of buyers who have not been able to reach agreement with me to date. Portions of Rock Island's system do not have a sufficient traffic base so as to support profitable operations. It is therefore understandable that prices offered to me in those instances are driven by a thorough business like approach to potential revenues. Such is the case in the instances of the RTA (commuter operations are never profitable), the OKT and the Mid-States Port Authority. My position has been clearly stated to be that I am in sympathy with their desire to serve the public interest but that it cannot be at the expense of the estate which could do much better by dismantling and selling the parts and selling the underlying real estate where it is able to do so.

The frustration of the buyers is further heightened when the FRA informs them of the inadequate appropriations available for Rock Island acquisition—a meager $38 million to be divided amongst many purchasers seeking to serve the public, Moreover, it appears that there is no prospect of increased appropriations in the foreseeable future. The bottom line then appears to be that the public interest continues in certain marginal lines of Rock Island's estate but that there is no ability to purchase, except at the expense and sacrifice of the estate. The "problem" is well defined and totally understandable.

To say, however, that there is no immediate solution to the problem and that Congressional action such S. 1879 is required, is not entirely accurate. My two years of experience in successfully negotiation and consummating transactions with buyers have convinced me that all problems are overcome where good faith exists between parties and the economics on both sides assure success.

Permit me to cite examples of how the problem can be and is being addressed and solved.

The Rock Island estate was the owner of a 62-mile branch line segment in the area of Hydro-Elk City, Oklahoma where grain is produced and rail service is vital. The typical problem presented was that the line was very marginal in terms of revenue and required extensive rehabilitation. The negotiations at the outset were conducted with a purchaser group (Farmrail) supported by shipper interests. Farmrail's offers to lease on an interim basis or to purchase were disproportionate to my assessment of value. An impasse ensued. The State of Oklahoma, however, recognizing that the public nevertheless had to be served, stepped into the breach to negotiate a purchase. Each party realistically examined the values in good faith and arrived at price. The negotiations were successfully concluded and the transaction approved on November 6, 1981 by the court. The first solution to the problem, consequently, is intervention and acquisition by the state affected, which then leases to a shipper-rail group and also provides rehabilitation money through its state coffers or applies to the FRA for available statutory assistance.

A second solution to the problem is long term leasing with financially responsible carriers. On December 3, 1981, I signed a 50 year lease with the Baltimore & Ohio Railroad for an approximate 100 mile route between Chicago-Bureau, Illinois and the transaction will be presented to the court and the ICC in a few days for approval. While the interests of the estate are better served by a cash transaction, I have not closed my negotiating doors to any financially responsible entity that is not able to immediately meet the capital commitment or does not desire to obligate itself and therefore seeks a long term lease. Once more, there is an example of what good faith negotiation can produce in a free market.

A third solution to the problem is for Congress and the affected states to address the issue of adequate appropriations for acquisitions from bankrupt railroads. It stands to reason that a carrier willing to serve the public interest simply will not and should not go into an unprofitable venture unless the public is willing to share the burden. In some instances, a grant will be required. In the Oklahoma example above cited, that state was willing to acquire and lease back, thus absorbing the cost which a private entity could not bear. It appears to me that a government grant or concession in special instances is appropriate and certainly more advantageous to the public interest than perhaps a Midwest Conrail which could be a financial debacle for the taxpayer as it has been in the east. If buyers have this additional leverage from government, I assure you that the Rock Island "problem" will disappear.

A fourth solution where agreement on valuation is still an obstacle, despite availability of funding, is the exercise of powers of eminent domain. The RTA, for example, is vitally interested in acquiring Rock Island's commuter line but we are far apart in price. Predictably, RTA pointed to the high level of losses attributable to any commuter service while I pointed to the high land values in the metropolitan area, the value of an assembled corridor and net liquidation values. RTA thereupon exercised its eminent domain powers and has brought proceedings to condemn the property which will now be valued by the court. A good possibility exists of a settlement before trial. Similarly, the City of Dallas desired to acquire real estate from Rock Island for use in conjunction with its new sports arena and we could not establish an agreed price. It also brought proceedings to condemn but the matter was settled out of court to everyone's satisfaction. Consequently, there is no reason why entities possessing eminent domain power (e.g. railroads and states) cannot emulate these examples and seek relief from the court if there is a genuine dispute on valuation. Another example of the use of eminent domain can be by agreement of the parties just as in the case of the sale of a Rock Island line to Little Rock & Western Railway Corporation which was preliminarily approved by the court on December 3, 1981. The purchaser reserved the right to purchase additional trackage at a later date, the price to be determined upon application to the court ". . . based upon then applicable principles of eminent domain law. . ."

Is S. 1879 the solution? I respectfully submit in the light of the foregoing that it is not on appropriate or even a necessary vehicle. The bill provides no real solution to the problems I have discussed above. It provides no appropriation over and above the pitiful fund being zealously guarded by the FRA. Its suggested provisions of an expedited schedule at an administrative, rather than a judicial forum, is fraught with such constititional due process and takings infirmities that could lead us once more into another long journey of court tests causing interminably delay rather than solving any transportation problem in the midwest. I also respectfully submit that there is an existing statutory framework of eminent domain to solve any genuine dispute on valuation—eminent domain, accomplished under a judicially established procedure which gives full faith and credit to the law of the state where the property is located.

S. 1879 would effectively remove competitive bidding for Rock Island's properties and would tend to dilute the estate. Competitive bidding for bankrupt properties is a benchmark of the liquidation provisions of the bankruptcy laws which encourage sales by public auction. An interesting example in Rock Island was the transaction involving a line between Hodge-Alexandria, Louisiana. No less than five entities competed for its acquisition and contiguous lines. All entities were approved by the ICC as qualified carriers for the line to serve the public interest. Only one, however, succeeded in acquisition (Continental Group) having made the highest and best bid in competitive open court bidding. S. 1879 with its administrative, rather than judicial climate, is less likely to produce such a result.

Moreover, the estate would be deprived of its ability to market its potentially valuable communication and energy transmission easement asset. There is far more to a railroad right of way than the ability to carry people and commodities on the rails. Based on my experience to date, I have determined that there is a significant potential for marketing easements for communication and energy transmission which could enhance the value of Rock Island's right of way over and above its intrinsic worth as a railroad or as part of the adjacent countryside and urban settings. I have received numerous expressions of interest for long stretches of Rock Island's right of way to be used as parallel easements for such transmission. In my negotiations with those interested parties, my first objective is to preserve the potential rail use for interested purchasers and then to accommodate easement purchasers whose use will not interfere with rail operations. I doubt seriously whether an administrative body under S. 1879 can realize this asset for the estate under a truncated schedule where rail service is the dominant objective. The loss to the estate could be significant.

I therefore must respectfully conclude by reason of the foregoing that S. 1879 will only tend to accommodate private interests at the expense of the creditors of the Rock Island estate and at no expense to the public. The preferable route is to permit me to continue good faith negotiations in a free market with prospective purchasers who can expect public financial support in those special instances where such support is merited. Interim service for the public by prospective purchasers pending serious negotiations is available. In all of his pronouncements, Chief Judge Frank J. McGarr, sitting as the reorganization court in the Rock Island proceedings, has constantly instructed me to negotiate interim leases and sales to carriers for continued rail use wherever possible. Despite the necessity for his order of liquidation and abandonment which has withdrawn Rock Island's property from public use, Judge McGarr continues to be sensitive to the public interest, just as he is sensitive to the rights of creditors who include personal injury claimants, small tradesmen, and taxing bodies, all eagerly awaiting distribution.

Thank you for this opportunity to explore the Rock Island liquidation progress. My attorney, Nicholas G. Manos and I will be pleased to answer any of your questions.

Senator KASSEBAUM. The next witness is Mr. Moritz, who is representing the creditors.

STATEMENT OF TERRY F. MORITZ, COUNSEL, ACCOMPANIED BY HAROLD KAPLAN

Mr. MORITZ. Madam Chairman, I am joined by Mr. Kaplan with the law firm of Mayer, Brown & Platt, who has been involved in these proceedings on behalf of the Continental National Bank. I am here on behalf of the First National Bank. Both Mr. Kaplan and I appear in our capacity as counsel for the indentured trustees.

In effect, Madam Chairman, we represent another side of public interest. The people I represent are not just major institutions who acquired Rock Island bonds; they are also people on fixed incomes who periodically call me to inquire about the likelihood of some resolution of the Rock Island dilemma. These are people who purchased an interest, or invested or lent funds to this Nation's railroad system sometime ago, and who expected to see the benefits of their investment come to fruition, and who, at least since March of 1975, have gotten nothing.

These are not large institutions. These are small people. And while I am very sympathetic with the desires and the legitimate concerns of this committee to deal with the problems of small businesses and farmers, the interests that I speak for must also be recognized.

I have prepared a statement, Madam Chairman, and I request that it be placed into the record in its entirety.

Senator KASSEBAUM. It will be done.

Mr. MORITZ. I will only comment briefly on the principal points in the statement.

As creditors, we have no objection to the incorporation of Rock Island lines into a viable national transportation system. We think that this is a perfectly valid and appropriate goal. We also are terribly interested in seeing to it that the resolution of the Rock Island problem takes place with the greatest amount of dispatch possible.

Senator Exon, in his comments to either Mr. Gibbons or Mr. Manos—and Mr. Manos picked up on it—said there are two sides to every story. In the Rock Island case, I suspect there is at least a third, and the third is the side we represent.

I would like the committee to keep in mind that the creditors and Mr. Gibbons have for the majority of these proceedings been in a somewhat adversarial position. From the inception of the reorganization proceedings until the Rock Island was ordered liquidated in January of 1980, we pressed for the liquidation of the Rock Island over the objection of the trustee. We pressed with the contention that the Rock Island was nonreorganizable. During that entire period, as I said at the opening of my comments, the people I represent received no interest payments. They have received none to date.

That entire background, I think, is appropriate in terms of testing the proposed legislation that is before you today. As we see S. 1879, it represents to the estate a replay of what the estate has had to go through with respect to the labor protection imposed upon the estate by Congress in the Rock Island Railroad Transition and Employee Assistance Act. That legislation was passed in May of 1980. It has delayed, and continues to delay the implementation of any liquidation of the estate.

And as we sit here today, the issue is still not resolved. The creditors challenged that legislation because the creditors felt that the legislation imposed upon the Rock Island a $75 million obligation that was an obligation that belonged more appropriately on the shoulders of Government. We felt then and we feel today that if there is some public interest to be served, the Rock Island estate is no longer the party upon whom that public interest burden should be imposed.

Turning now to the bill before us, it seems to us that this bill is doing the same sort of thing as the Rock Island Transition and Employee Assistance Act, but in a slightly different way. For example, the bill talks about an offer by a financially responsible person. Mr. Manos has indicated that that is a problem. We see it as a very serious problem.

If, for example, the proposed bill would deem the OKT to be a financially responsible person based on the offer to purchase that they submitted to the trustees for the lines that they are interested in. I would point out to the committee that the offer that they submitted was totally contingent on FRA funding, for which no firm commitment had been obtained, and the offer itself was contingent upon the availability of that funding.

Now, the offer they submitted stated they thought the funding was available.

Senator **Kassebaum**. Are you speaking of some specific offer?

Mr. **Moritz**. Yes, I am, Madam Chairman. I am speaking about the OKT offer that was submitted to the trustee—I am sorry if I wasn't clear—just in September of this year, that has precipitated parts of the problem that have brought us here today.

The point is that if that's an example of a financially responsible person, then what this bill would do is tie up a major asset of the estate for a very long period of time, for an entity that had no firm commitment for funding, and if after the process wound its way through the ICC, through the reorganization court, through the innumerable challenges as to what is a proper value, we were suddenly left with a situation where the FRA could say, "I'm sorry, your funding has been cut," who would compensate the estate?

Would the Government be in a position, then, to compensate the estate? Would it be required to? On behalf of the interests I represent, we would of course say, Well, the Government is required to compensate the estate for the loss for the entire period that these assets have been held in abeyance. The estate has received no compensation whatsoever.

Now, we come to the end of the period contemplated by this bill. No purchase goes forward, and the creditors for the estate are literally left holding the bag once again, as Congress attempted to do when it passed the Rock Island Transition and Employee Assistance Act. So those kinds of problems are inherent in this bill.

I have others. I would be happy to detail them, but I have exhausted my time.

Senator **Kassebaum**. It seems to me that it goes back to the total package of the estate, and the indebtedness of the estate. There are parts of it that could be sold for scrap value.

Why has this not been done as part of a package? Do you have any record of the valuation of the estate?

Mr. **Moritz**. The total value of the estate?

Senator **Kassebaum**. Yes.

Mr. **Moritz**. I have only rough rules of thumb, which are not competent, because they are really a function of a lay person reviewing numerous documents.

Senator **Kassebaum**. You are a lawyer representing the major creditors?

Mr. **Moritz**. That's correct. I understand your question. We have seen values for the estate in excess of a half a billion dollars. It is difficult to derive actual numbers.

Let me give you an example in a circumstance where we have some knowledge, and where I think you are particularly well informed. That is the offer for the lines OKT seeks to acquire. The trustee has received an appraisal for that line, a 34-mile segment of the line from Dallas to Fort Worth, of $50 million. OKT says that the entire 900 miles of that line is worth $45 million. That difference in the opinions of value is a rather major controversy.

I have seen information that supports the trustee's values. So based upon that, in my capacity as a creditor, if the issue were controverted in a forum, my obligation would be to carefully determine who was correct. If it turned out that the trustee was correct, we would be obligated to resist such a sale unless it was for a price that reflected the high values arrived at by the trustee.

Let me get to a point that I wanted to make in my comments. As we see it, the issues of value may ultimately have to be litigated. We think the proper place to do that is in a court where issues such as quality of title, alternative uses, and other indicia of value can be properly resolved.

We think that a single court should do this, and we think the reorganization court is most aptly suited to do that.

I don't want to see a process occur where we go once to the Commission to establish value, and then go through a full de novo proceedings before the reorganization court. A process not unlike that was used in the rail reorganization—the Regional Rail Reorganization Act of 1973. And the document I have here is the result of valuation proceedings before the special court. It's dated November 24, 1981. It's 309 pages long. I have no desire to see a repeat of this occur in the Rock Island situation.

Senator **Kassebaum**. I don't think any of us do.

Mr. **Moritz**. I am concerned that if we do a two-stage proceedings here, where the Commission looks at it, and then the reorganization court looks at it, we're going to exacerbate the problem.

Senator **Kassebaum**. We still go back to the basic questions we can't seem to resolve. One thing that troubles me is that there doesn't seem to be a framework for the general valuation of the Rock Island properties that both sides can agree on.

How can the valuation of the properties and the debt outstanding against the estate be determined as a package if a framework can't be agreed to.

Mr. **Moritz**. I separate the two issues, because the debt may need to be scaled down in certain circumstances if the valuation isn't there. And there are stockholders involved who are entitled to any residual value which is left after all of the debt is paid, and all of those interests need to be kept in mind.

This is not a process whereby you eradicate debt and you sell all of the lines, because you still have the stockholders' interests who need to be considered here. We can't forget about them in their entirety. So you have got to—you have got to keep those two issues separate. They are not companion pieces.

Because of the interests of the shareholders and because the shareholders are entitled to the residual value after all debt is paid, certainly as between, in this case, as between those shareholders and the public interest, the public interest is not entitled to the residual value in the Rock Island if there be any.

Senator **Kassebaum**. No, I don't think anyone is saying that.

Mr. **Moritz**. OK. What I believe is the appropriate forum is the reorganization court. As has been suggested by the trustee in his comments, I think one of the mechanisms that exists presently is condemnation proceedings.

I am ill advised to take strong issue with Mr. Blanchette, but I think that he was slightly incorrect in advising you that condemnation proceedings are available only to States. A very brief survey of the laws of the States in which the Rock Island operates indicates that condemnation proceedings are available to rail carriers. As the trustee has indicated, those condemnation proceedings in certain instances have been started before the reorganization court.

We suggest that because this mechanism exists today, there isn't any need for additional legislation. And condemnation proceedings can be started immediately by any carrier before the reorganization court.

There are other methods available before the reorganization court to attempt to—for example, the use of a special master to attempt to resolve issues of value, and I think all of that can be accomplished in the existing framework. It may require some additional flexibility on the part of both the potential purchasers and conceivably at one point or another on the part of the creditors and the trustee.

But I think those techniques are available, and I believe they should be used first, before we start another round of legislation followed by—almost inevitably— litigation.

Senator **Kassebaum**. You feel condemnation proceedings would enhance the whole procedure?

Mr. **Moritz**. I have a very simplistic approach to that. They have already been used successfully in these proceedings. I can't see any reason ——

Senator **Kassebaum**. How many times?

Mr. **Moritz**. I am aware of three occasions: the city of Dallas, which the trustee mentioned; another proceeding, I believe, up in Minnesota was contemplated—I don't know that it was actually filed; the RTA instituted condemnation proceedings before the reorganization court at least 6 months ago to condemn the trackage that serves the commuters to the south of the city of Chicago.

Senator **Kassebaum**. I just wanted to check, because different States have different procedures for handling condemnation cases.

Mr. **Moritz**. That is correct, Senator. The procedures vary. And they are not without their complications.

Senator **Kassebaum**. One of them being, that a bond has to be posted? This has been done by Mid-States, I believe.

Mr. **Moritz**. With the RTA, I believe there was no bond posted, because it was a municipal corporation. With respect to the city of Dallas, I can't answer the question. It, of course, would have been a municipal corporation as well.

The idea of posting a bond really is no different, just in response, than the concept of a financially responsible person. If one needs to be financially responsible under S. 1879, one would presume that the capacity to post a bond would be available to a financially responsible person. The problem that we are focusing on is that when somebody moves to acquire property in a condemnation proceedings or under this bill, that person ought to be in a position to carry out what it says its intention is.

Senator KASSEBAUM. Exactly.

Mr. MORITZ. If the estate is held hostage to that process, and if at the end of the process finds it doesn't have a willing purchaser any longer, then the estate has been subject to serious erosion, and I would submit an unconstitutional taking, if it's not compensated by the Federal Government.

And I don't want to see that occur. I don't want to be involved in such litigation.

Senator KASSEBAUM. I don't either. It seems to me we should, as reasonable people, be able to agree on a reasonable valuation without feeling it's the Government's responsibility. I don't know why we keep getting back to that.

Mr. MORITZ. Senator, for a very simple reason, and that is if a procedure goes in place which does cost the estate something, the creditors of the estate will feel a right to be recompensed. I have no desire to see the Federal Government spend any money unnecessarily. I do think that Mr. Gibbons is absolutely correct in his statement that the lack of available financing has hampered the sale of the lines.

I am not entirely certain of the complete accuracy of this statement, but I spoke with Mr. Gibbons this morning, and I believe he can confirm that in the dispositions of Rock Island properties to date the FRA has yet to fund any such disposition.

Senator KASSEBAUM. We haven't been able to finalize a purchase in which they have agreed to participate.

Mr. MORITZ. But I think the point is that we have sold 800 miles of the line without FRA funds, and it's been 18 months plus.

Senator KASSEBAUM. That's not very much out of the thousands of miles.

Mr. MORITZ. I agree. I wish it were a great deal more.

Senator KASSEBAUM. You stated very forcefully that you would like to see this handled in the reorganization court. You feel that this is the fair and unbiased body to hear this. As you know, there are those who feel the court would not necessarily be unbiased in its interpretation of the valuation. You on the other hand, are afraid of the ICC making this determination.

What would be your response—and perhaps Mr. Manos would have a comment on this, too—to using the existing special court that's been set up to evaluate the properties for Conrail?

Mr. MORITZ. I don't think that's necessary.

Senator KASSEBAUM. Why would that not be a good forum?

Mr. MORITZ. I would be ill advised to make a firm comment.

I would be happy to look at that question and advise you by letter with respect to it. I am familiar with the special court in a general sense, but not in the specific sense. But I would prefer not to make a statement, because I am not completely informed.

Mr. **Kaplan**. My name is Harold Kaplan. I represent the Continental Illinois Bank as an indentured trustee, in a similar capacity as Mr. Moritz represents the First National Bank.

We have briefed in our statement essentially some of the problems we feel on the legal side to the legislation, constitutionality and such. But I think one of the real basic problems that we have addressed that may be of more interest to the committee is inherent delay which the process—or the contemplated two-part mechanism would bring to the process.

One difference in this case as to other pieces of legislation or statutes which have been mentioned is that we already have a reorganization court in place, and it can really not be divested of its role in the case. The way we see bringing in any other agency—the ICC or any other instrumentality—is that it would just bring another element of delay, another area to adjudicate, which is also subject to appeals from either side, either the purchaser side or the trustees and the estate side, as to what they have come up with in valuation, which would then be shipped to another forum for adjudication.

It's a process which we believe inherently brings delay. We are in a procedure, in a railroad reorganization proceeding that has been going on for, now, 7 years, and in which the interests that we represent as creditor's counsel have basically been deferred for all that period. We think essentially in that kind of delay it really is, as Mr. Moritz has indicated, an extension of some of the delays which we have also experienced both because of the Rock Island Act uncertainties and also because of some of the orders that have been issued by the Interstate Commerce Commission where carriers believe that there really is no pressure on them to negotiate full sales, because they believe they can go to the ICC to get directed service orders and continue operating at what we believe are artificially low rental values.

In sum, I think a problem beyond all the constitutional issues we can raise—and God knows we have briefed and researched so many of these constitutional issues before— is that I don't believe the statute in its mechanism of trying to go around the reorganization court or add a second layer of review expedites the procedure at all.

In terms of the issue of the condemnation statutes, and whether a condemnation statute in any one State really addresses and brings a carrier—or can be used by another carrier in this State, I think it's fair to say whatever the exact wording of the statute—if a carrier did come into the reorganization court, the reorganization court would consider its request and try to expedite the procedure. I don't think that's been done at this point.

[The statement follows:]

STATEMENT OF TERRY F. MORITZ, ON BEHALF OF THE ROCK ISLAND CREDITORS

Mr. Chairman and Members of the Committee: Thank you for the invitation and the opportunity to appear before you in connection with S. 1879 on behalf of certain creditors of the Chicago, Rock Island and Pacific Railraod Company.

This statement is submitted on behalf of Continental Illinois National Bank and Trust Company of Chicago and the First National Bank of Chicago in their capacities as Indenture Trustees for the income debenture holders and first mortgage bondholders, respectively, and Henry Crown and certain other substantial holders of first mortgage bonds, income debentures and common stock of the Rock Island. The Continental Bank and the First National Bank do not appear as creditors in their own right but only in their capacities as trustees for the several thousand individuals and institutions which lent their funds to the Rock Island and have not received any payments from the Rock Island estate throughout the six and one-half years of the reorganization proceedings.

The Trustee of the Rock Island, William M. Gibbons, has submitted a statement to the Committee which we generally endorse. As creditors of the Rock Island our main concern is for the orderly disposition of the properties of the Rock Island estate and the satisfaction of our claims as rapidly as possible.

I. BACKGROUND OF THE REORGANIZATION

The Rock Island entered reorganization under Section 77 of the Banrkuptcy Act on March 17, 1975. At the direction of the Reorganization Court Judge, Frank J. McGarr, the Trustee continued rail operations in the public interest for the next four and one-half years despite staggering losses. During the reorganization years, from 1975 to 1980, the Rock Island suffered net losses totaling $210,627,230. In addition, it incurred upwards of $200,000,000 in new operating debt which it has not been able to pay and which remain obligations of the estate.

On January 25, 1980, the Reorganization Court found the Rock Island unreorganizable and ordered the Trustee to commence liquidation. On June 2, 1980, Judge McGarr confimed the total abandonment of all Rock Island lines and service, found the the Rock Island was not required to serve the public interest any longer, and found that the creditors had a constitutional right to have their claims satisfied promptly. The Interstate Commerce Commission agreed with the Reorganization Court in this conclusion.

II. IMPEDIMENTS TO LIQUIDATION

As the Rock Island Trustee has pointed out in his statement to the Committee, high interest rates and stringent financing restrictions, in both the public and private sectors, have limited the ability of potential purchasers to buy Rock Island lines in which they would be interested. In addition, there have been other impediments.

One of these impediments is the Rock Island Transition and Employee Assistance Act, which attempts to impose on the Rock Island estate a new, retroactive $75,000,000 labor protection burden. Because of the constitutional deficiencies of that legislation, litigation was begun challenging the Rock Island Act. The Act's labor protection provisions were found unconstitutional and enjoined by the Reorganization Court. The constitutionality of those provisions was argued in the United States Supreme Court just last week. The uncertainties which that Act created has further blocked the progress of the estate in formulating a plan of reorganization, paying administrative creditors and getting on with the liquidation process.

Further, the Interstate Commerce Commission continues to authorize other carriers to use Rock Island lines to the present day. In certain instances, it has authorized such use at rental levels which are artifically low and which the creditors believe have been a major contributing factor in delaying the sale of Rock Island lines. Artificially low rentals imposed by the Interstate Commerce Commission have left carriers with little incentive to negotiate purchases from the Rock Island estate.

Further, the creditors are quite concerned that there seems to be artificially limited bidding for particular lines. Indeed some rail carries apparently believe that they have a right to use the Commission as a helpmate in holding the price of Rock Island lines down. There has been only limited competition for many lines which, because of their traffic and revenue base and their connection with other systems, should be of interest to a number of carriers. This fact raises serious questions as to whether Rock Island lines might formally or informally have been parcelled out by agreement among other rail carriers. It also raises serious questions about the efficacy and effects of the so-called 401 hearings conducted by the Federal Railroad Administration regarding the interest of carriers in Rock Island rail property.

The creditors have no objection to the sale of any Rock Island lines which can be incorporated into the national transportation system to provide continuing rail services, so long as the Rock Island Estate receives the full and fair value of that property. That process has been impeded, both by legislative and Interstate Commerce Commission action for at least two and one-half years, as well as by the apparent refusal of potential purchasers to make more than bargain-basement offers. It is against this backgound that S. 1879 must be evaluated.

III. S. 1879

The objective of Congress for rapid sales of Rock Island lines can be effected only if Congress adopts a balanced approach which recognizes the rights of the Rock Island Estate and the public.

Congress must ensure that the Rock Island estate is not further penalized by being compelled to hold its rail property for possible sales. Further, Congress should encourage the sale of Rock Island trackage by making funding available to permit sales of lines at fair value.

S. 1879 does neither. It contemplates what is in essence a further taking of the Rock Island's property for ostensibly public purposes in a way which impedes the Rock Island Estate's constitutional right to withdraw from continued rail operations and to go forward with its liquidation/reorganization process. It limits not only the bargaining and negotiation process, but also the ability of the Estate to realize full value for its property.

Without unduly reiterating the problems enumerated by the Trustee, such as lack of funding, it should be specifically pointed out that the two-step mechanism contemplated by S. 1879—an initial determination of a "reasonable price" by the Interstate Commerce Commission and then approval by the Reorganization Court "so long as the purchase price is not less than required as a constitutional minimum"—will only delay the sale of Rock Island lines. This mechanism has serious deficiencies when measured against the principles of the doctrine of separation of powers and the due process clause. The Reorganization Court, both as a statutory and constitutional matter, is reposed with the jurisdiction over the administration and disposition of the property of the Rock Island Estate. Any effort to remove or short-circuit that jurisdiction will almost assuredly provoke litigation and concomitant delay.

As the Trustee has indicated in his statement to the Committee, any valuations of the property of the Rock Island Estate can be conducted in the Reorganization Court. In fact, the determination of constitutional rights can be adjudicated only in a judicial forum such as the Reorganization Court and, under separation of power and due process principles, the Reorganization Court cannot be divested of its jurisdiction over property of the Rock Island Estate in deference to the Interstate Commerce Commission or any other agency. Thus, bringing the Interstate Commerce Commission into the valuation process at all only adds an element of delay, because the Reorganization Court will be required to adjudicate constitutional minimum value do novo in any case.

S. 1879 also promises further delay in the ultimate sale of Rock Island lines by its suggested amendment of Section 122(a) of the Rock Island Transition and Employee Assistance Act to allow the Commission to continue to issue service orders into the indefinite future. Not only is this provision inconsistent with the Rock Island's constitutional right to withdraw its property from indefinite commitment at a loss to rail service, but it would, as we have prevously explained, only discourage the expeditious purchase of Rock Island lines by carriers who will be able to continue exploiting artificially low rentals for those lines under Interstate Commerce Commission orders. The elimination of this provision would, of course, still allow carriers to negotiate arms-length leases with the Trustee for the use of lines.

Perhaps, most importantly, S. 1879 will actually impede a free market for Rock Island property. For example, S. 1879 does not recognize the fact that there may be overlapping interests in the same rail properties of the Rock Island. As the Trustee has indicated in his statement, a number of other carriers and entities have expressed interest in trackage which is included in the 800 or so miles which were operated by the Oklahoma, Kansas & Texas Railroad Company. Moreover, S. 1879 does not provide a mechanism whereby a suitable competitive purchaser can present itself to the Estate and outbid a carrier which filed an application. Finally, S. 1879 does not recognize and provide for compensation to the Estate for the futher delay which it would cause the liquidation/reorganization process of the Rock Island, its further erosion of the Rock Island Estate, and the discontinuation of competiton for Rock Island properties. Further mechanisms are possible to facilitate and encourage the sale of Rock Island lines from the perspective of the Trustee and the creditors. One suggestion would be to provide for the cancellation of Rock Island's obligations to the United States through Federal Railroad Administration loans or the assumption of those obligations.

A Congressionally-imposed mechanism for selling Rock Island lines outside of those mechanisms already provided in the Reorganization Court, is neither necessary nor appropriate. Congress can make a meaningful contribution to the process of expediting the sale of Rock Island lines by providing financing for acquisitions. In this way, Congress can have a constructive role in both encouraging the estate and potential purchasers to consummate sales expeditiously and to assure the Rock Island Estate and creditors that they will not be penalized further for the continuing commitment of Rock Island rail-related property for potential future sales and incorporation in the national transportation system.

CONCLUSION

The creditors do not view the issue of sales of Rock Island lines to other carriers as being in any way a contest between the Rock Island Estate and the public interest. The major creditors believe that both the Reorganization Court and the Rock Island Estate have shown due deference to the public interest in the past. Our mutual goals of effecting the transfer of needed rail lines consistent with the requirement that the interest of the creditors and shareholders be fully protected can be effected to our mutual satisfaction. The creditors would be pleased to work further with this Committee, its staff and Congress to work towards that goal.

Thank you, again, for this opportunity to appear before the Committee. We will be glad to anwer any of your questions.

Mr. MANOS. Senator Kassebaum, I've taken the witness chair again only because I felt you wished me to respond to the suggestion that perhaps a three man court be a solution here, because it might solve the question of who is the neutral entity to accomplish the solutions we're seeking here. It's a fertile idea. It is something that as Mr. Moritz has stated perhaps should be pursued and examined. The only caveat I have to that is that the question of the taking has to be addressed by the Government in conjunction with a three man court. You know, we could leave here today, if Congress would say that we are establishing a three man court, and we are establishing a quick take, which is akin to quick take in eminent domain proceedings. So that as of tomorrow, the AKT now is installed in 300 miles of track or the Mid-States Port Authority is installed in 450 miles of track. And the Chicago-Northwestern is installed as of today on quick take procedures on 850 miles of track of the Rock Island.

The only question to be decided is what value is to be paid to the estate and who will pay for it, whether it's going to be the railroads and whether the Government will pick up the shortfall. There we're going into the dangerous exercise again that I fear FRA Administrator Blanchette is concerned with, whether the Government is willing to pick up the shortfall and the bill for a quick take acquisition of all of the properties.

Let me give you my candid opinion as to where we should be going. The question is one of how long will the Government continue to control the destiny and the affairs and the disposition of a bankrupt railroad. I submit to you very candidly and very respectfully that if today Congress was to say that we cannot subsidize the acquisition of the Rock Island lines, consequently, we will not go into S. 1879, because there is a constitutional dimension we are concerned with and might cause a delay.

If Congress would do that, and if it would leave the court to the exercise of its huge powers under the Bankruptcy Act to consider the disposition of the properties, I submit to you, Senator, that OKT will be knocking on our door, and so will Mid-States Port Authority and the fair and free exchange and negotiation would probably result in a price that would be satisfactory to all the parties. And if there isn't, if there is a slight shortfall, then in those special instances where there is, then the States can react and then the public interest can come in at that particular point.

Senator KASSEBAUM. Mr. Manos, nobody wants the Federal Government involved more than necessary or involved at all. I'm sure Mid-States Port Authority certainly doesn't either, but I would also submit to you that I don't see you in the next 6 months selling the track that Mid-States Port Authority is bidding on for $18 million. And if, indeed, you figure that you can do this, you should do it. Don't hold that over as a threat for higher price from Mid-States Port Authority.

Mr. MANOS. It is not held as a threat, Senator Kassebaum. Just as the Mid-States Port Authority, quite obviously, and I hope, is not holding your legislation and your bill as a threat on the Rock Island. You don't perceive it as a threat, and I hope that you won't perceive our situation as a threat. We have a dilemma which you are seeking to pursue and so am I. Nobody is being threatened here.

The $18 million is achievable, according to the estimates that the trustee has. Now the only way that we can decide whether that is correct, I suppose, is by going about the job of dismantling and then see whether $18 million is produced. Unfortunately, if you submit it to that test, then the line is gone.

Senator KASSEBAUM. That's why I asked what price you have gotten for salvage material that you have already sold.

Mr. MANOS. Senator, we do not have the experience as yet of having dismantled and put into cash or quantified what net liquidation values will produce; however, the trustee's staff which is very knowledgeable on net liquidation values has produced these figures for the trustee and he's very confident in them. We're in a climate at the particular time in our economy where scrap values, for example, are extremely depressed. Everybody knows that.

It wouldn't be fair to Rock Island, for example, or to anybody, to take as a precedent what is achievable today in the scrap market. Just as in Penn Central on the properties that were not conveyed to Conrail, Penn Central is holding onto some of those properties and waiting for a propitious moment to liquidate them. The Rock Island trustee and its creditors on behalf of the estate might opt to railbank, for example, and hold those properties for a more advantageous time in terms of scrap values. But the $18 million that Mr. Gibbons is talking about are realizable asset values, even taking into account the depressed scrap market. Who knows, when the scrap market is bettered, it could be that the $18 million could be bettered too.

So you see, there's a genuine dispute on price and perhaps this neutral court that you're talking about might be the solution, but only if the shortfall is picked up by somebody.

Senator KASSEBAUM. Thank you very much.

The next witnesses will participate as a panel. Mr. Boyd, Mr. Ziebarth, Mr. Smith, and Mr. Fay.

It is a pleasure to welcome you all here. First, I will call on a person who has devoted a great deal of time and effort to trying to maintain rail service in his area of the State. I think if the Mid-States Port Authority offer is ever accepted, he should be the chief engineer. I will call Mr. Boyd.

STATEMENTS OF McDILL BOYD, PHILLIPS COUNTY REVIEW, PHILLIPSBURG, KANS.; CARL ZIEBARTH, EXECUTIVE VICE PRESIDENT, OKT RAILROAD, DALLAS, TEX.; JIM SMITH, FIRST NATIONAL BANK, HERINGTON, KANS.; AND GORDON FAY, OKLAHOMA DEPARTMENT OF TRANSPORTATION, OKLAHOMA CITY, OKLA.

Mr. Boyd. Thank you, Senator. I am chairman of the fully qualified subdivision of the State, Mid-States Port Authority which represents 14 Kansas counties along the northern branch of the Rock Island, which have been most seriously affected by the suspension of service.

I have prepared a statement to show that the port authority has made two tenders to the trustee, Mr. Gibbons. The first was for $20 million, made 15 months ago, for the entire line from Denver into Colorado Springs to Kansas City and Council Bluffs. There were 689 miles of railroad owned by the Rock Island, plus track rights from Limon to Denver and McFarland into Kansas City. After 15 months, no negotiations on this tender have been initiated by the trustee or members of his staff.

We didn't push very hard, because we would have had to go out and raise the money, before we could have purchased it at that figure, but there was no interest shown whatever in that tender.

During this interval the port authority has continued to seek operators, some small segments were served where lucrative industrial loads were available close to interline points, with the Burlington Northern and the Union Pacific providing the services on rental agreements satisfactory with the trustee. Other rail carriers, the D. & R.G. and Santa Fe, Missouri Pacific, who had lines close to or intersecting with the Rock Island, showed no interest at all.

Most of the line remained unserved, until temporary services were provided by the Cadillac & Lake City from Limon to Goodland, and by the Brandon Railroad from Clifton to Manhattan, both without agreement with the trustee, on track rentals established by the Interstate Commerce Commission.

Last week Kyle Railways of San Diego filed an application for temporary service to close the last gap on the line, Limon, Colo., to Manhattan, Kans. If this certificate is granted, service can be started from Phillipsburg east to Belleville, a distance of 91 miles.

I do have a map attached to my formal statement.

Without such service, the impact upon a rich and productive area would soon become disastrous. With temporary service, essential foodstuffs and other industrial products are being moved. The Rock Island estate is getting some revenues. In the meantime, long-range plans are essential—longer segments can be served more efficiently, industries can make their plans, those that would like to expand can proceed with confidence that they will have rail service. If they don't have that confidence, they don't have that rail service, some industries will be forced out and others will be forced to defer any plans to create additional jobs in our area.

The authority has the right to issue revenue bonds secured by track rent. But it will certainly not issue any bonds unless we are assured that sufficient track rent is available to retire all the obligations in full. It will not do very much good to trade one bankrupt operation for another.

So a thorough study has been made of the track pattern, the revenues available, the divisions of revenue available. Kyle Railways has offered to pay sufficient track rental to retire obligations in full, if the line from Colorado Springs to Belleville—450 miles—can be purchased at a reasonable figure.

As a result, we made a second tender to the trustee, offering to buy this 450 miles for $27,000 per mile, or $12,150,000. We have twice negotiated this offer at his office, and believe that it is in excess of any possible amount of money that he could ever obtain by scrapping the line and selling the salvage.

I have included with my formal statement, scrap value figures from the trustee's own staff, from the Federal Railway Adminstration, from a complete feasibility study compiled by Morrison & Knudson, and from current scrap value quotations at market.

In all cases, including the trustee's own figures, our offer in cash amounts to more than he could expect to get from rotting ties and twisted steel and assorted scrap scattered over 450 miles of railroad at some indetermined time in the future. Our offer—in cash—invested at current interest rates—would net creditors more money—in the bank—than the net income from the sale of scrap in small segments, to be picked up, hauled to a warehouse, cleaned and fitted, and sold someday for something.

In other words, we believe that our offer would assist the trustee in meeting his undenied obligation to get the high dollar for the benefit of the creditors. Rock Island tracks in Kansas and Colorado are laid upon easement land, and the reversionary clause is very clear, as Mr. Gibbons has pointed out. If the time comes that such land cannot be used to provide rail service, ownership reverts to the adjoining land owners. As a consequence, the trustee has no right-of-way to sell. He may have some quit-claim deeds that he can give, as he has pointed out, in order to be sure they got him off the property. He may have something to give in the way of rights for others to cross the right-of-way, and we're perfectly willing that the Rock Island estate retain all of those auxiliary rights.

We're a nonprofit group, organized solely for the purpose of providing an essential public service. We are precluded from ever making any money. If the thing happened to make some money, the money would revert back to the counties which own the port authority or in which the port authority is part of those counties.

But we submit to you that estate values will be enhanced. It does own some property adjacent to the right-of-way. We submit to you that those properties will be worth more if the rail service is provided than they will be without it. In other words, if the rail service dies, the value of the trustee and the estate's property adjacent to that right-of-way will certainly decline in value. An elevator or a small industry dependent upon rail service will certainly find it difficult to stay in business. And I don't know what you could get for the little narrow strip of land along an abandoned railroad track that now has value.

We think we are enhancing the estate's assets by maintaining the rail service. We support S. 1879 wholeheartedly. It's in the best interests of the public, the consumer, the farmer and the shipper;

the industries which provide jobs; and would prevent incredible damage to roads and bridges that are subjected to heavy hauls that can more economically be moved by rail.

As a nonprofit entity, entirely dedicated to serving the public interest, we urge your support to provide a means of breaking the deadlock between the trustee of a bankrupt railroad, who admits that his intent is to get high dollar for the creditors, and I agree, that is his responsibility, and port authority responsibility to try to provide an essential public service protecting the interests of creditors, as well as those who so badly need regular, long-term permanent rail service.

Thank you for the opportunity to make this summary statement.

Senator **KASSEBAUM**. Thank you, Mr. Boyd. I hope the rest of you don't think I'm too parochial by calling on the two Kansans first.

[The complete statement follows:]

STATEMENT OF MCDILL BOYD, CHAIRMAN, MID-STATES PORT AUTHORITY

Mr. Chairman and Members of the Committee: I am McDill Boyd, chairman of the Mid States Port Authority of Phillipsburg, Kans., and we believe we have already offered to pay in excess of net liquidation value for 450 miles of Rock Island Railroad on its northern branch through Kansas and on into Colorado to Colordo Springs. Our original offer, and subsequent revision, has been rejected in negotiations with the Trustee in Bankruptcy, William M. Gibbons. Appropriate evidence to sustain this belief will be offered in this presentation.

The Mid States Port Authority is a regional subdivision of the State of Kansas, formed by 14 of its counties under a statute specifically updated by the Kansas Legislature, and revised to permit the purchase and/or rehabilitation of bankrupt railroads where service to the public had been suspended.

The entity is wholly nonprofit. None of its officers or directors are permitted to draw a salary. If, through any of its activities, the Port Authority should ever turn a profit, it would accrue to the benefit of the member-counties, and their people.

Mid States was specifically formed to restore or maintain rail service on the Rock Island railroad from Denver and Colorado Springs to Council Bluffs, Iowa and Kansas City, Mo. Its board of directors includes county commissioners from the 14 Kansas counties most seriously impacted by suspension of service along the northern branch of the railroad, described above, and representatives of major shippers along the route. The stated intention of the board is to provide service to as many people and as many communities as possible in this undeserved area.

The Port Authority was organized according to statute in March, 1980. Its Plan of Performance was formally adopted after hearings as required by law. Procedures have been approved by the office of the Attorney General, in the State of Kansas. The Port Authority is a fully qualified legal entity, with jurisdiction to extend rail services beyond its own geographical limits in order to reach necessary terminals. A railroad cannot begin, nor end, in a cornfield.

Authority to issue revenue bonds in unlimited amounts, secured only by revenues from Port Authority activities to implement its formal Plan of Performance, is in place. No such bonds will be issued, however, and no public expense incurred, until a firm contract for service has been negotiated with an acceptable rail carrier in an amount sufficient to retire all indebtedness.

At a conference with William Gibbons, Trustee in Bankruptcy for the Rock Island at his office in Chicago, February 20, 1980, while the formation of the Port Authority was in its formative stage, he made the following statements:

1. He had no firm bids on the northern branch of the Rock Island;
2. That he had been directed by the Bankruptcy Court to dispose of the company's assets; and
3. In case he received no bids, he would be forced to tear up the track for salvage and sell it for the benefit of Rock Island creditors.

Subsequent conferences with management of the D&RG, Union Pacific, Missouri Pacific and Santa Fe Railroads—major carriers with lines in the general area, or intersecting the Rock Island at various points—indicated "no interest at this time."

The Burlington Northern, with an interchange at Almena Junction, had indicated an interest in 21 miles from Phillipsburg to Almena; the Union Pacific had shown an interest in 40 miles between Colby and Goodland, Kans., and between Hallum and Fairbury, Nebr., where substantial industrial loads were available.

But no carrier showed any interest in any segment of the rest of the 689 miles of track along the northern branch, or the track rights attendant thereto. No other service was available after the directed service order expired March 31, 1980, and the impact upon a rich and productive area quickly reached crisis proportions.

Studies conducted by the Kansas Department of Transportation, and the Kansas Economic Development Department, and similar Colorado departments, had found that rail service was the single most important service denied to people along the bankrupt routes. The damage done to highways and bridges by heavy trucks moving bulk products is incredible. The cost in fuel (three times as much by truck as by rail) is inexcusable in our time. Should elevators and business and industrial activities in this area long be denied service, the economic impact would soon be disastrous, and the cost of moving foodstuffs to market would escalate dramatically, adding to the cost to consumer, and still further reducing net farm income.

The Rock Island, at the low end of the totem pole on the national railroad ton-mile ratio, had collapsed. No major carrier was interested except in short, lucrative segments, close to interline points, leaving the major portion of the communities along the line unserved.

It was here that the Mid States Port Authority attempted to step into the breach in the interest of public service.

But mileage was too long; traffic was too thin to establish a viable service throughout the entire northern branch. There were, however, major segments where service appeared to be economically sound if low interest funding was made available, and a reasonable purchase price could be agreed upon.

To firmly establish these alternatives, Morrison & Knudsen, internationally known contractors, was employed to make a complete feasibility study. The Mid States Port Authority was formalized; viable segments were identified; and after the Rock Island Employee and Transition Act became law (we are indebted to Senator Nancy Kassebaum for introducing this legislation) which provided access to low-interest funding, an offer to purchase the entire northern branch for $20 million was made to the Trustee.

The offer was acknowledged some 15 months ago, with a notation that it was "under study", but neither Mr. Gibbons, nor any member of his staff, has since discussed the tender with representatives of the Mid States Port Authority.

Nevertheless, the Authority continued to explore possible alternatives, and to seek competent operators who would be willing to pay sufficient track rent to support a complete debt retirement program. It was quickly apparent that there was no interest in the entire northern branch, but some interest was expressed in certain segments.

The Port Authority decided to support the carrier willing to serve the longest segment. The Union Pacific continued to serve the Fairbury-Hallum segment in Nebraska on a lease arrangement satisfactory to the Trustee. The Burlington Northern extended its service on a temporary certificate again, on a lease agreed to with the Trustee. Industrial loads available justified substantial rentals. But this is not true of other segments with grain to move.

Cadillac & Lake City is now serving on a temporary certificate from Limon, Colo., to Goodland, Kans., and the Brandon Railroad is serving on a temporary certificate from Clifton to Manhattan, Kans., both without agreement with the Trustee, but on a lease payment established by the ICC.

The Kyle Railways, Inc., has just filed an application for a temporary certificate from Phillipsburg to Belleville, Kans., the last unserved segment along the northern branch through Kansas, with the exception of the segment from Manhattan to McFarland, Kans., where there are no stations.

There are temporary services, but the Port Authority's efforts to buy longer segments, and provide better services, have been thwarted.

The advantages of a single, long-line service in rate-making, car delivery and general service categories are obvious, and despite the short-segment, temporary services, for which we are very grateful, the Port Authority still seeks to buy as much of the line as economic conditions will permit, and give assurance of long term permanent rail services in the public interest.

We do not challenge the obligation of the Trustee to obtain the high dollar for the benefit of Rock Island creditors. But the Port Authority, charged with representing the public, feels that its tender of $27,000 per mile for 450 miles of Rock Island track between Belleville, Kans., and Colorado Springs, Colo., actually exceeds the amount of money the Trustee could ever get by tearing up the line and selling it for salvage.

I have here comparative salvage values; two prepared by the Federal Railway Administration; one from the Morrison-Knudsen feasibility study; one prepared by the Trustee's own staff; and scrap value figures obtained from reputable dealers.

In all cases, including the Trustee's own figures, our offer of $27,000 per mile exceeds the value of the scrap.

The Rock Island does not have title to the land upon which its tracks are laid in Kansas and Colorado. Actually, the railroad was built upon easements of a reversionary nature. If, at any time, such land ceases to used for rail purposes, title reverts to adjoining landowners. The Trustee has no land to sell on the Rock Island right-of-way across these two states. The Rock Island does own some adjoining properties, and the Port Authority believes that by buying this railroad and providing rail service, that it will actually enhance the value of the adjoining parcels of real estate.

Certainly the valuation of an elevator, or an industrial plant dependent upon rail service, will be worth more with such service than without it, and in most cases, values will be seriously reduced if rail service is long deferred.

Yet in conferences with the Trustee, our offer in excess of net scrap value have been rejected. He feels that he has already met the requirements that the public interest be served, and that his sole obligation is to obtain the high dollar for the creditors.

I submit to you that $12,150,000—our offer—in cash—invested at current interest rates—would be worth more to creditors at the end of any given period of distribution—than the scrap steel and rotting ties scattered over 450 miles, rusting away until some undetermined date when small segments can be picked up, hauled to a warehouse, cleaned and fitted, and sold in the open market after deducting interest, sales expense and handling charges.

There should be some way to bring such an impasse to a head. I believe this legislation offers a fair solution. By giving the Interstate Commerce Commission the authority to determine a reasonable purchase price in excess of net liquidation value which will be binding upon both parties, that the best interests of creditors and the public alike will be served.

Creditors are entitled to their money now—not a heap of rotting ties, twisted rails and miscellaneous scrap which may, or may not, at some undetermined time in the distant future, be converted into cash.

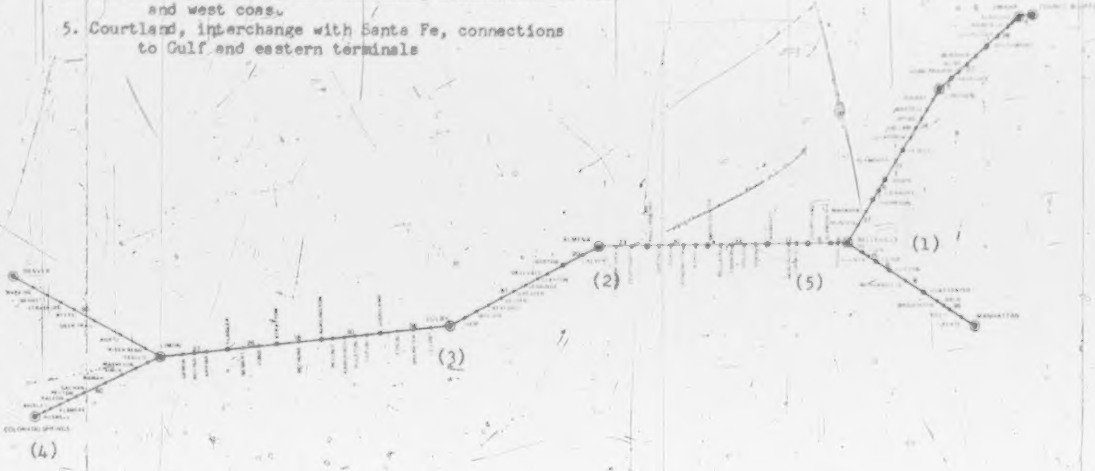
The public needs the service; farmers need access to the marketplace for their foodstuffs; employees of small industries adversely affected need their jobs; and consumers should be protected from unnecessarily higher transportation charges.

There is no way to know how many miles of bankrupt track could be put back into useful service if sold at prices in excess of net liquidation value. The Port Authority is confident that 450 miles in Kansas and Nebraska could be if it was priced on this basis.

Then rehabilitation could begin. Dilapidated facilities could be replaced. Service on a long-range basis could be assured. Shippers could confidently make future plans. Capital could be committed to upgrade facilities and provide additional jobs.

I urge your support of Senate Bill No. 1879. It should serve creditors, consumers, farmers, shippers, and the general public as well. Charts showing net scrap value as referred to in this presentation, will be attached to my formal statement.

Thank you for your attention.


(1)
(2)
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(5)
COLORADO SPRINGS
DENVER
MANHATTAN

1. Belleville, eastern terminus
2. Almena Junction, interline with Burlington
3. Colby, interline with Union Pacific
4. Colorado Springs, western terminus, connections to Gulf and west coas.
5. Courtland, interchange with Santa Fe, connections to Gulf and eastern terminals

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Net liquidation value (inventory compiled by Rock Island Trustee)

Item:	Total
145 mi, 90-lb rail, net at railhead ($120 per ton)	$2,766,600
238 mi, 100-lb rail, net at railhead ($137 per ton)	5,738,656
37 mi, 112-lb rail, net at railhead ($212 per ton)	1,529,580
450 mi of ties, 600 saleable per mile at $5.50	1,485,000
450 mi miscellaneous scrap at $75.60 per ton	816,480
Total value, after removal cost, but before commission and warehouse charges	12,336,316
These are Trustee's asking prices, with instructions to remove no property until it is sold. Estimated selling cost of 10 percent (Port Authority estimate on sales commission)	1,233,631
Net available to creditors, if and when sold	11,102,685
Data compiled from Morrison-Knudsen study:	
Good rail, 141 tons per mile, 450 mi equals 63,450 tons at $100	6,345,000
Scrap rail, 37.6 tons per mile, 450 mi equals 16,920 tons at $75	1,269,000
Tie plates and anchors, 50.5 tons per mile equals 22,725 at $100	2,272,500
Spikes, 8 tons per mile, 450 mi equals 3,600 tons at $75	270,000
Useable ties, 1,140 per mile equals 513,000 at $4.50	2,308,500
Total	12,465,000
Less total cost of recovery, bridges, signals, rail, ties, scrap, transportation, site grading and cleanup at $22,450 per mile	10,102,500
Net scrap	2,363,000
Using relayable rail at $176 per ton, the Trustee's valuation, add	4,822,200
Total available to creditors	7,185,200

Scrap steel price quoted by A. & K. Rail Materials Co., Kansas City, Mo., Oct. 19, 1981

Cut in 2-ft lengths (at the mill) per ton $90 times 80,370 tons	$7,233,500
Scrap (at the mill) $60 per ton times 26,325 tons	1,579,500
Total, at the mill	8,813,000
Using the Trustee's removal cost figures, $39 per ton times 106,695	4,161,105
Net available to creditors (steel only)	4,651,995
Trustee's tie estimate, 600 per mile at $5.50 each	1,485,000
Total value, ties and steel	6,136,995

Senator **Kassebaum**. Mr. Smith is a representative of the banking interests, and a person who has dedicated much effort to seeing that the OKT remains a viable and sound operation.

Mr. **Smith**. Thank you, Senator Kassebaum.

I am president of the First National Bank of Herington. I am also president of the Oklahoma, Kansas & Texas Rail Users Association. This association was formed in May of 1980 by a group of rail users basically to provide start-up for the Oklahoma, Kansas & Texas Railroad Co. which had agreed to operate the lines between Salina, Kans., St. Joseph, Mo., and Harrington, Kans., down to Dallas, Tex. In a period of approximately 3 weeks, this group raised almost $3 million to allow the new railroad to begin operation.

The principal interest of the association is to provide continued service to the shippers who need rail service. Most shippers have constructed facilities in reliance upon continued rail service, and the failure to provide for such continued rail service seriously jeopardize the substantial investments which have been made.

The area in Kansas, Oklahoma, and Texas that this railroad serves is heavily engaged in agriculture, and without adequate rail service, the already depressed industry of agriculture suffers an additional blow. We of course represent and the railroad serves a great many other types of industries that are as severely affected as is agriculture.

This association, along with the State of Oklahoma and the OKT Railroad, presented an offer to purchase the line from the trustee of the bankrupt Chicago, Rock Island, Pacific Railroad Co. covering the property from Salina, Kans., to Dallas, Tex., for the sum of $45 million.

I would like to digress just a second from my written statement, if I could, Senator. Both the trustee and his legal representative have made the statement several times or at least inferred that this money is not available, and I take it, to us. We have been assured by Chairman Blanchette of the Federal Railroad Administration that the money is committed to us; it is available; and if purchase can be consummated, it will be forthcoming.

In addition to offering the $45 million, we offered to lease the line from St. Joseph, Mo., to Herington, Kans., at a rate of $25,000 per month. On September 25, 1981, the trustee rejected the offer, withdrew the Dallas/Fort Worth segment from consideration, and counteroffered to sell the remaining line for a price of $57.4 million and to lease the line from St. Joseph to Herington for $100,000 per month. The counteroffer by the trustee was not acceptable and in our opinion is extremely excessive for the property involved.

The offer to purchase that was submitted was based upon appraisals conducted by the real estate department of the MKT Railroad with a full review and concurrence of the Federal Railroad Administration and the Oklahoma Department of Transportation and were in excess of their estimates of the net salvage value of the property. It was our feeling that this was a fair and equitable offer and that it should have been accepted by the trustee and presented to the court with his approval.

On October 26, 1981, we attempted through our attorneys to discuss the matter further with the attorney for the trustee, and we were informed that we would be wasting our time to discuss, one, the inclusion of the Dallas/Fort Worth segment in our proposal; two, a reduction in the rent payable pursuant to the interim lease under which OKT Railroad had been providing service; and three, a price which was below the trustee's net liquidation value. We were advised that the trustee's door was always open, and he would like to discuss any alternatives, but these items would not be negotiable. What was left?

Under the present circumstances, we have no hope for continued rail service after December 31, 1981, unless there is a legislative solution to the problem. This would be a major blow to the shippers and our communities. We would urge you to take prompt action to avoid substantial losses and disruption which would otherwise be involved.

It is our sincere belief that the legislation which you are considering is of the utmost importance. Our experience indicates that negotiations between the trustee and potential offerors do not work under the present legislative framework. I fully understand that one of the primary duties of the trustee is to protect the estate of the Rock Island and in a case of liquidation to make every attempt to get the highest dollar for the assets of the estate.

But if service is discontinued, the only value of the property would be its net liquidation value. The discontinuance of service may even reduce the assets available to satisfy the claims of creditors because a substantial portion of the railroad is located on easements which were granted for railroad purposes only and would not be available for any other use. As long as service is provided, there is a possibility of the property having a value in excess of net liquidation value. The discontinuance of service simply makes no business sense to us.

There is another very important aspect in this very unusual situation in that the public interest also must be served. The experience of dealing with the Rock Island bankruptcy would indicate that the bankruptcy court is not an appropriate forum for the purpose of deciding these substantial issues.

It appears that there is a very close working relationship between the trustee in bankruptcy and the bankruptcy court. Further it appears that a railroad bankruptcy leads to the restructuring of the business as an investment company in order to utilize the tax benefits which are available on account of the losses sustained in connection with the railroad operation.

I am submitting with this a separate "Summary of Efforts for Continued Rail Service" and an article which appeared in Forbes magazine on October 12, 1981, which would imply that one of the purposes of the bankruptcy proceeding is to convert the business of the bankrupt railroad to that of an investment company for the benefit of the holders of securities of the bankrupt railroad.

The bankruptcy court and the trustee both feel that they have salved their obligation to the public interest by operating the Rock Island Railroad for almost 5 years at substantial losses. These statements which have been repeated from time to time by the court and the trustee do not make sense.

The purpose for the continued operation of the railroad by the trustee was an attempt to rehabilitate the debtor for the benefit of the creditors of the bankrupt railroad, and any benefit to the public interest was only incidental to that purpose. It was only upon discontinuance of the operation of the railroad by the trustee that the public interest really became a crucial factor. In other words, the trustee and the court have both made statements to the effect that they fulfilled their obligations to the public interest at precisely the time that we feel the public interest should become a crucial factor for their consideration.

The shippers along this line have a critical need for rail service. An unusual number of these people are captive to this railroad and do not have the benefit of other lines to handle their products. Aside from that, under the Staggers Act, even those shippers who have alternative means of transportation would not be allowed the competitive choice that was very clearly the intention of the Staggers Act.

The frustrations that we have encountered in these negotiations are not isolated occurrences. Similar frustrations have been encountered by other parties who are interested in maintaining continued rail service over other segments of the line. The trustee has apparently taken the view that his principal responsibility is the liquidation of the assets of the bankrupt Rock Island without regard to the public need.

This raises substantial questions. If rail service is discontinued, the trustee's alternative is to sell the assets on a basis of net salvage value rather than on a basis of an operating railroad. The trustee would forfeit any value in excess of net liquidation value.

It is my firm belief as a banker that $45 million cash in hand is a great deal better option than speculating on higher values from unknown sources. It would appear that it would have been in the best interest of the estate and its creditors to accept such an offer.

In view of the difficulties which have been encountered, it appears that it is necessary to have this legislation in order to protect the public interest in the continued operation of railroads to the extent that a purchaser is available who is willing to acquire the railroad properties for a fair market value and provide continued service.

I do not want to ignore the difficulties of the trustee in administering the bankrupt's estate. The trustee is not in a position to rely upon his own experience and judgment and must rely upon what others tell him as to values. There is a difference between an appraiser who expresses an opinion as to value and a person who is willing to put cash behind his valuation.

I digress again. The real test of any appraisal—and I think we all know those are no more than estimates—is how much cash will it bring. An appraisal really doesn't mean much, other than an educated guess. If the trustee has an appraisal that is higher than the cash offer, the trustee may be reluctant to accept the cash offer because he will be subject to hindsight.

I believe that the appropriate forum to consider these matters would be the Interstate Commerce Commission. The trustee and other persons in interest would have an opportunity to be heard before the Commission and their evidence considered in arriving at a reasonable purchase price for the rail property. The liquidation of a bankrupt railroad, unlike many other forms of bankruptcy, is a matter which requires considerable experience and expertise. The Interstate Commerce Commission has the experience and the expertise to effectively manage these matters so that all parties would be well served.

It is very apparent that there is a great need for the legislation you are considering under S. 1879, and we of the Rail Users Association fully support it. The Interstate Commerce Commission constitutes an agency which has experience in dealing with railroads and railroad property. A bankruptcy court and a trustee in bankruptcy may deal with the reorganization or liquidation of a railroad on one occasion. The Interstate Commerce Commission deals with these problems on a daily basis.

All persons dealing with railroads rely to a great extent on the knowledge and experience of the Interstate Commerce Commission not only in establishing reasonable rates, but also in determining values and providing for service when required in the public interest. The Interstate Commerce Commission would provide an experienced, knowledgeable, independent, and qualified forum to determine questions of value and disposition of the railroad assets of a bankrupt railroad in a manner which would facilitate continued rail service without depriving the bankrupt's estate of a fair value for the railroad properties.

We are not asking for a bargain price or a gift, but we are asking for an opportunity to deal with knowledgeable persons who know the values of the property and would be in a position to effect a sale of the property in a businesslike manner.

I also will submit with my statement, Senator Kassebaum, a summary of the efforts that we made for continued rail service, some suggestions that we have concerning the bill that is before you, one of which we think would alleviate the need for a dual hearing as the representative representing the creditors mentioned.

I also have an example of what would happen to one or some of our captive shippers on this segment of the line and in one instance, a very graphic example of the difference in costs that would arise from a shutdown and being forced to truck transportation.[1]

Thank you very much.

Senator **Kassebaum**. Thank you very much. I appreciate your testimony.

Mr. Fay, as president of the Oklahoma Department of Transportation, I welcome your testimony this morning.

Mr. **Fay**. Thank you, Senator.

We have had some unique experiences in negotiating with the Rock Island and in reaching some successful conclusions on some recent negotiations. I would like to have submitted for the record my written testimony, and I would like to make some remarks separate from that, in order to stay within the time limits.

First off, I think the issue which has been raised here this morning, the question of money, is a very appropriate one because I think it's a dilemma faced by all sides in this particular issue.

The potential purchasers, at least the major ones, certainly face that difficulty of putting together the capital resources necessary to acquire the properties at what they believe to be a fair price. Similarly, the trustee, in viewing what he is asking and what he might agree to in negotiations, has to view the ability of the purchaser to ultimately pay the agreed amount. There must be a closing.

Trying to resolve these various differences requires, in my opinion, some determination and means of reaching an agreement of price some time before all the money is clearly on the table. This is particularly true to the extent the public parties are involved.

The State of Oklahoma, in particular, has appropriated substantial funds—some $22 million—to purchase Rock Island properties in its State. The question frequently is asked: Is that all? Are you willing to spend it all? Well, the question really can't be answered until you know what the price ultimately is.

The State has attempted to make offers involved in various transactions, which it believes are responsible ones. We have managed to work out with the trustee purchase arrangements on substantial portions of the properties in the State, and then have the option to purchase additional properties.

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[1] The documents referred to have been retained in the committee files.

However, we are still faced with a dilemma, particularly with OKT, as to their offer, which extends beyond the borders of Oklahoma, and which the State itself can't deal with specifically, but for which there must be a mechanism for resolving all the various price issues that are involved.

Similarly, the State is actively involved in, and wishes to see succeed, the purchase of the line between Memphis and Amarillo, Tex., a project which has been called the Arkansas-Oklahoma Railway, A-OK. Again, the issue gets down to price. We have an offer on the table with the trustee; he has a counteroffer. As I believe Mr. Gibbons mentioned in his testimony, he is awaiting response from us at this stage, which is absolutely correct.

However, the key to the response which we are able to give is, again, the question of money. The authorities, from our perspective, have a reasonable and fair offer before them. He thinks otherwise, and he may well have reason for that.

When all is said and done, you ultimately get back to what is the appropriate forum when the parties are unable to finally resolve that narrow area of negotiations. The Interstate Commerce Commission is the route suggested by this piece of legislation. The special court concept is another possible way of doing it. The bankruptcy court is a third one.

The question that comes up as to the constitutionality of the legislation itself is of some trouble to us, because we are concerned with a potentially protracted settlement, even with this piece of legislation.

I think that the principal reason that we support it is that it is a mechanism, and is a possible mechanism where both sides to the negotiations, quite independent of using it specifically, may find it of sufficient pressure to finally reach agreements. Having done so, at least the public parties involved then need to fully face all of t funding questions involved.

Our other client interest, the Arkansas Transportation Comm sion, who has also been involved in the acquisition between Memphis and Amarillo, has recently gone to its State legislature and come out with essentially a draw. The House defeated a potential appropriation bill by one vote; the Senate approved it. It never came to final resolution as the session adjourned.

The issue, however, in appearing before the committees in that State, clearly came down to money: How much are we committing ourselves to? We are not interested in writing a blank check. Come back to us and tell us what the price is and we will then formulate the legislation that is necessary.

I think, in dealing with the questions of FRA funding, you get back to the same essential issue. The Rock Island Transition Act provided certain set-aside funding for Rock Island problems. The classic question: Is it enough or too little? We don't really know, no more than the trustee ultimately knows at this stage how much money he may realize from his estate.

But until we find a way to resolve the big purchases, I think we are going to be continually going around in this dilemma. And faced with that kind of choice, the passage of this legislation is at least a step in the right direction.

I might further add that on review of the specifics of the bill—and we will submit this to you separately—we would like to make certain that the language is clear, that a State or governmental entity can in fact use the mechanism which is here in this bill. Our reading of it would be that there is some question as to whether a State would be defined as a responsible—financially responsible—party, and we believe that should be the case.

Thank you, Senator.

[The statement follows:]

STATEMENT OF GORDON H. FAY, OKLAHOMA DEPARTMENT OF TRANSPORTATION

My name is Gordon H. Fay. I have been retained by the Oklahoma Department of Transportation (ODOT) for several years in a variety of rail matters with particular emphasis on finding solutions to Rock Island Railroad service losses in that State. I am also retained by the Arkansas Transportation Commission (ATC) for the same purposes. I am pleased to have the opportunity to appear before you today to express the views for ODOT on S. 1879, and to report on my experience as chief negotiator for both States in major acquisition programs of former Rock Island lines.

After substantial evaluation, I developed in conjunction with the staff of ODOT, a master plan setting priorities for acquisition of Rock Island properties in that State. The formation of the Oklahoma, Kansas, and Texas Railroad (OKT) by Missouri-Kansas-Texas Railroad (MKT) was fully consistent with Oklahoma's program and on ODOT's behalf, I provided substantial assistance in its formation and continue to support its efforts to acquire the North-South Rock Island Line.

In mid-1980, the ATC requested that my firm investigate the feasibility of restoring service on all Rock Island properties in Arkansas. Resulting from that effort was the formulation of a plan jointly sponsored by ODOT and ATC to restore to service Rock Island's "Sun Belt Route" between Memphis, TN and Amarillo, TX. The plan which has become known as the "A-OK" (Arkansas-Oklahoma Railway) was filed on September 15, 1980 as a State Ownership Plan with the FRA and with the ICC for authority to acquire under the provisions of the Rock Island Transition and Employee Assistance Act (RITEA). During mid-1980, negotiations were initiated with the Rock Island Trustees for A-OK and various other lines in Oklahoma.

With operations by OKT underway on the Rock's North-South main line and certain Oklahoma branches, ODOT turned its attention to finding operators for other lines. In late 1980, it issued a request for proposals from operators to lease after State acquisition of portions of the Rock Island west of El Reno, OK. In early 1981, we selected a now "short line" operator, Farmrail, to lease rail property from the State once acquired from the Rock Island Trustee. After substantial, lengthy and sometimes difficult negotiations, agreement was reached in July, 1981, with the Trustee on purchase of the Sun Belt between El Reno and the Texas State line and one branch line (178 miles).

ODOT closed on 62 miles of this property on November 18, 1981 and will close on the balance when agreement is reached on the whole A-OK package. Farmrail commenced operations the day after closing between Clinton and Elk City, OK., restoring service to communities without rail service since Rock Island ceased operations.

Separately from Farmrail, negotiations have continued at a slower pace on purchase of the A-OK properties between Memphis and Amarillo. The Santa Fe has indicated its willingness to operate this line under lease from Oklahoma and to purchase outright the properties in Arkansas and Texas under certain conditions. At the present time, ODOT is offering $45 million for approximately 760 miles of mainline and the Trustee is asking $75 million with certain conditions. Some of the A-OK properties and the Farmrail Purchase (62 miles at $3.1 million) overlap. The OKT and A-OK also overlap for 147 miles between McAlester and El Reno, OK. It is this common OKT/A-OK trackage which Oklahoma has committed itself to purchase as part of the OKT transaction. By mutual agreement, this property now operated by MKT and OKT would be made available under State ownership to the Santa Fe as an "overhead" railroad.

Governor Nigh of Oklahoma has actively supported acquisition and continued operation of economically viable Rock Island properties. The State legislature has furthered his efforts by passing two appropriation bills and other bills giving ODOT various powers to implement a sound rail freight program. The legislature has appropriated $22 million to purchase and rehabilitate Rock Island properties of which $3.1 million was just paid to the Trustee for the Farmrail properties. Failure to reach agreement with the Trustee on OKT or A-OK price by early 1982 may result in a loss of the balance of the funds upon expiration of the appropriations in June, 1982.

Oklahoma has obviously had success in negotiating with the Trustee as it has now closed on 62 miles and has reached agreement on another 116 miles (total value $8 million) and has worked out problems on easements and a variety of other issues. Despite this success, there has been frustration in reaching agreement on the larger packages. Our view of the in place value of the rail properties and that of the Trustee is still substantially far apart on the segments between El Reno and McAlester, OK and between Little Rock, AK and Memphis, TN.

While I want to make every effort with the Trustee to resolve differences in price and terms without use of a third party, I would welcome passage of S. 1879. Enactment of a specific means of adjudication of price difference might encourage both parties to first reach an accord, knowing that an independent review might yield a less favorable outcome.

S. 1879 would also help to balance the power as between the Trustee who can set his timing on final price negotiations on the schedule desired by the creditors and shipper/public interests who demand rail service restoration and stability now. When RITEA was under consideration by Congress, I actively urged that language similar to S. 1879 be included. Passage now would be a helpful step to facilitate the transition of lines from the Rock Island estate to parties able to assure continued operations. ODOT and ATC fully support S. 1879 and urge its passage.

Senator **Kassebaum**. Thank you very much, Mr. Fay. We appreciate it.

Our next witness is Mr. Zeibarth, vice president of the OKT.

Mr. **Zeibarth**. Madam Chairman, I have a written statement which I would like to submit for the record. I will attempt to summarize it very briefly.

I am appearing here at the request of the committee, to provide information concerning the efforts of the OK&T to purchase and make permanent operations over nearly 800 miles of rail line owned by the estate of the bankrupt Rock Island.

The OK&T is a wholly owned subsidiary of the MKT Railroad, and was created for the specific purpose of operating these lines. We believe, if properly, prudently, and economically operated, these lines can in the long term become a feeder line to the MKT, over the Fort Worth, Dallas, and Oklahoma City gateways.

For this to be accomplished, these lines must be methodically rehabilitated, just as we have rehabilitated the MKT over the past 11 years, and an intense program of industrial development must be carried out, all of which will take time and permanency of operation.

Candidly, the interim operations of the OK&T have been quite unattractive to date. I have attached to the testimony the financial statement, showing that there are substantial losses of several million dollars during the roughly 17 months of operations to date. We have had to spend considerably more than we first projected on track maintenance, and we believe we have substantially strengthened the property in several respects.

Nonetheless, we do face a very substantial deferred maintenance burden if we are able to purchase the property from the trustee.

We believe, despite these limitations, that a survey of the shippers served by the OK&T would demonstrate a high degree of commitment and reasonably satisfactory service with this physically inadequate plant. We certainly would hope, if we could purchase the line, to improve upon that record.

Of course, that does bring us to the difficulty of negotiations for the purchase of the property. We began to take our first steps toward this as far back as February of 1980, when the Kansas City terminal was still operating the lines, as directed service carrier.

That initial offer was rejected by the trustee, but it was suggested by many parties that temporary operation of the line, under a lease or interim arrangement, would provide the opportunity to develop the traffic and operating experience that we would need to properly assess its long-term value.

A number of knotty problems had to be overcome, one of which was alluded to by Mr. Smith, which was providing funds for start-up, and the Rail Users Association was created to meet that need. We did begin temporary operations in the summer of 1980, and we then came back to the question of purchase of the line. We were informed by the trustee that he wouldn't be in a position to commence negotiations until the fall of 1980, when he thought he would have his appraisals available.

Numerous discussions and negotiations took place during the months of November and December of 1980, and we again presented an offer to purchase the lines; and we followed the form which had been used by the Cotton Belt in their previous negotiations with the estate. And necessarily, you do have contingency with respect to conveyance of title and obtaining financing. That's normal in any purchase offer made by a responsible party.

This offer was rejected. Subsequently, in the early part of this year, the trustee suggested that possibly we should look at a lease-purchase arrangement of a long-term nature. We did develop such an offer and presented it to the estate, but then we were informed that the principal creditors would not go along with such an agreement.

Later, in the spring, the trustee and representatives of the OK&T met with Mr. Blanchette, who volunteered the services of certain members of his staff, to review the transaction and the values of the properties, and also to informally consider the rail users and the OK&T's potential for obtaining financing under section 505, Public Law 94-210.

The FRA took appropriate time to review all of the appraisals and records and related materials provided by the parties, and did determine a value, which was somewhat less than our final offer.

With that information, in mid-September we made a joint offer, on behalf of the Rail Users Association and the State of Oklahoma, to the trustee, which we feel is fair and realistic. It was in excess of the minimum values that the FRA had felt comfortable with, and we believe that it is good for the creditors. We were disappointed that this offer was also rejected by the trustee, at the end of September.

The offer does amount to several thousand dollars a mile more than any other offer accepted by the trustee for a large segment of trackage, and we believe that there are no other outstanding offers—at least that we know of in specific dollars—for any large part of this system that we are trying to acquire.

He did, as Mr. Smith observed, submit a counter-offer which simply was beyond values that we or the FRA, or anyone else, could conceive of.

In essence, we have reached an impasse in these negotitions and they have been terminated. We have no doubt that we would be able to obtain the $45 million offer in a timely manner, at the time that the trustee would be in a position to convey title, had he accepted it.

Obviously, there are all sorts of technical problems in putting the package in place, but these would not, in our estimation, be ones that would involve any great delay. We, too, are mindful of the timeframe that creditors have borne and which, frankly, we have borne because we have been paying a rental that is beyond the capability of the operation in its present form to sustain.

For that reason, we took the necessary steps, which were concurred in by the trustee, to close down the OKT's operation on November 30, 1981. We came under tremendous pressure from all quarters to file temporary authority under section 122, and we did so. However, as I'm sure you know from recent legal developments, we are required to vacate the premises by December 31, 1981, and pursuant to the order of the seventh circuit, we are complying. We have posted the embargoes and are shutting down the operation in an orderly manner.

It will deprive some 77 cities, towns, and communities, and hundreds of shippers, of service; and about 400 OKT employees, most of whom are ex-Rock Island people, will have to be released from service.

Two reasonable parties may disagree upon the value of the subject properties, especially when their basic interests are different. Practical problems which the proposed legislation seeks to address arise because the present state of the law, in discovering disposition of the property and liquidation, doesn't provide a satisfactory mechanism to resolve such honest differences of opinion. We think the trustee has acted in good faith and we have, too. We simply have not been able to bridge the gap.

The Congress must certainly balance the constitutional rights of the estate and its creditors with those of the public interest. The bill which is being considered by this committee seems to be a practical way to accomplish this. I am no lawyer and I really can't comment on the very interesting discussion that occurred earlier, but basically the prospective purchaser and the representative of this estate could present their evidence to an impartial body and obtain a determination based on the transfer of full fee title without any reservation or lien or incumbrance whatsoever, and that would be subject to judicial review. The potential purchaser and its sources of financing could also make a final determination as to whether there was financial feasibility.

I hope the testimony I have provided will assist the committee with the facts that are necessary to make their determination in this area.

[The statement follows:]

STATEMENT OF KARL R. ZIEBARTH, EXECUTIVE VICE PRESIDENT, OKT RAILROAD

My name is Karl R. Ziebarth. I am the Executive Vice President-Financial of the Oklahoma, Kansas and Texas Railroad Company and I hold the same position with the Missouri-Kansas-Texas Railroad Company. My office is at 701 Commerce Street, Dallas, Texas 75202. I have held this position with the Oklahoma Kansas and Texas Railroad Company since its incorporation in May of 1980.

I am appearing here today at the request of this Committee to provide information concerning the efforts of the Oklahoma, Kansas and Texas Railroad Company to purchase and make permanent its operations over nearly 800 miles of rail line owned by the Estate of the bankrupt Rock Island Railroad. I would like to state at the outset that the OKT is not asking for, nor sponsoring, this legislation and in no way wishes to adversely affect the legitimate rights or position of the bankrupt Estate. Two reasonable parties may disagree upon the value of the subject properties, especially when the basic interest which they represent are different. Nonetheless, the practical problems which the proposed legislation seeks to address arise because the present state of the law governing disposition of the property of a railroad in liquidation does not provide a satisfactory mechanism to resolve such honest differences of opinion. Under present bankruptcy law a trustee in bankruptcy is granted an admittedly wide latitude in determining the manner in which the estate's properties shall be disposed, though all sales of property must be approved by the Court having jurisdiction. As a practical matter, a close community of interest between the Trustee, the Court having jurisdiction, and the principal creditors normally develops in a protracted proceeding like a railroad bankruptcy. These interests may conflict with those of other, general creditors and, of course, the public, which has an ongoing interest in the maintenance of the maximum possible amount of rail service even after it has been determined that liquidation is an appropriate remedy for the properties of any bankrupt rail carrier.

This brings me to the position of the OKT. The OKT is a wholly-owned subsidiary of the Missouri-Kansas-Texas Railroad Company and was created for the specific purpose of operating some 777 miles of rail line, in some cases jointly with MKT, running from Atchison, Kansas, St. Joseph, Missouri, and Salina, Kansas, south through Herington and Wichita, Kansas and through Enid, Chickasha and Duncan, Oklahoma, and Fort Worth to Dallas, Texas, along with two branch lines—one between El Reno to Oklahoma City, Oklahoma, and another from Chickasha through Anadarko to Richards Spur, Oklahoma. We have also agreed to the request of the State of Oklahoma to consider extension of the latter branch line beyond Richards Spur to the Fort Sill/Lawton area.

The economic interests which caused the MKT to take this action are very simple. We believe that if properly, prudently and economically operated, these lines can in the long term become a valuable feeder line to the MKT over the Ft. Worth/Dallas and Oklahoma City gateways. For this to be accomplished, these lines must be methodically rehabilitated, just as we have rehabilitated the MKT over the past 15 years, and an intense program of industrial development must be carried out, all of which will take time and permanency of operation.

The interim operations of the OKT have been quite unattractive to date. Attached to this testimony are financial statements showing the losses from operations through December 31, 1980, and for the first ten months of 1981. Cumulatively, these losses are in the range of $4 million without any major track rehabilitation programs, though the OKT has spent considerably more than first projected to on track maintenance, and have substantially strengthened the property in several respects. It is in better condition now than when the OKT took it over in June of 1980. Nonetheless, the deferred maintenance burden which the OKT will face if it is able to purchase the property will be enormous. The OKT management, which is identical to that of the MKT, has developed substantial experience in dealing with such difficult financial and operational situations. The rebuilding of the MKT is proof that with time, and with support of the general public, Federal agencies, and the shippers we serve, a property which has been weak can be restored to the pint where it fills a useful role in the Nation's transportation system. We believe that a survey of the shippers served by the OKT would demonstrate the high degree of loyal commitment and satisfactory service we have rendered, albeit though with a physically inadequate plant. If these lines could be purchased, the OKT certainly intends to improve on that record. This brings up the difficulties of negotiations for the purchase of the property.

The first steps toward negotiating for purchase with the Estate were taken while these lines were still being operated by the Kansas City Terminal as Directed Service Carrier. This offer, based on the limited information available at that time was rejected by the Trustee. It was suggested by many parties that temporary operation of the line under a lease arrangement would provide the opportunity to develop traffic and operating experience while meeting the shipping public's need for service. A number of knotty problems, including labor negotiations, contract negotiations, obtaining working capital, and obtaining appropriate ICC orders had to be resolved, but this was all accomplished and temporary operations began June 6, 1980.

During the summer of 1980, we were informed by the Trustee that he would not be in a position to commence negotiations covering the sale of the OKT lines until the Fall of 1980, at which time he expected to have his appraisals of the value completed by his outside appraisal firms. Consequently, trips were made to Chicago during the Fall of 1980 to review the Trustee's records, line maps and deeds. Numerous discussions and negotiations took place during the months of November and December of 1980. The OKT presented to the Trustee at that time a formal offer to purchase the lines, the form of which was similar to that used by the St. Louis & Southwestern Railroad for its purchase of the Tucumcari line. This offer was rejected, and the Trustee maintained that his appraisals reflected that the lines in question should be valued at $160,000,000. In January of 1981, at the suggestion of the Trustee, a Lease Purchase Offer was presented to the Estate, but the OKT was informed that the principal creditors would not go along with such an agreement. In May or June of 1981, the Trustee and representatives of the OKT met with Robert Blanchette, Administrator of the Federal Railroad Administration, and Mr. Blanchette volunteered the services of certain members of his staff to review the transaction and the values of the properties in conjunction with an application to be filed by the Rail Users Association and/or the OKT to secure certain Federal financing pursuant to Section 505 of Public Law No. 94-210. Subsequently the FRA reviewed the Trustee's appraisals, records, and related materials as well as those of the OKT. The FRA, after several months, finally determined that the lines in question, including that portion of the Rock Island trackage from Oklahoma City to McAlester, Oklahoma, had a value of $42.7 million.

By mid-September of 1981, the Rail Users Association, the OKT, and the State of Oklahoma assembled and prepared a joint final offer of purchase, which all parties felt was fair, realistic, and in excess of the minimum value estimated by the FRA. Consequently, on September 18, 1981, the Association, the OKT, and the State of Oklahoma submitted their final offer of purchase to the Trustee which called for the purchase of all the OKT lines, plus the Oklahoma City to McAlester line operated by trackage from Herington to St. Joseph, Missouri, which the OKT offered to lease instead of purchase. The Association, the OKT and the State of Oklahoma believe that their offer would certainly be in the best interest of the Rock Island Estate, its creditors, and the shipping public. Since the offer amounted to several thousand dollars per mile more than any other offer accepted by the Trustee for a large segment of trackage, the parties had every reason to hope that the Trustee would accept this offer.

However, on September 29, 1981, the Trustee responded to the offer in question and completely rejected it. In doing so, he submitted a counter-offer which was considerably higher than the offer made, and he withdrew the Dallas-Ft. Worth segment, which has always been viewed as an integral part of the OKT operation, from the sale.

In essence then, the OKT and its associates have reached an absolute impasse with the Trustee and negotiations have terminated. Rental at the rate initially negotiated was clearly beyond the income stream developed by actual experience with the property. The valuation we placed on the property and amount which we, jointly with the Rail Users Association and the State of Oklahoma, offered was sound and indeed above the actual value in terms of salvage and real estate values which the property has. The OKT and the Rail Users Association were able to obtain financing commitments at the $45 million level which included a direct guarantee of debt by the MKT and by participation by the State of Oklahoma. It has certainly been demonstrated that these parties are financially responsible entities, and while there are numerous problems of a technical nature in putting the package into place, there is no doubt that the funds could have been promptly delivered to the Estate should it have accepted the offer and been in a position to convey title.

Once negotiations reached the point of impasse, the OKT, in view of the losses sustained, had no choice but to terminate the operation and took the necessary steps, concurred in by the Trustee, to close down the OKT's operation on November 30, 1981. As you are well aware, the affected shippers and communities were devastated by this development, and the OKT came under tremendous pressure from all quarters to file for temporary authority under Section 122. This was done, on the basis of seeking a reduced rental, such as the "Frisco Formula," which would permit breakeven operations while a solution to the impasse developed—possibly involving other parties or a change in position by the Estate.

At a hearing on November 13 pertaining to the termination of the lease between the Trustee and the OKT, the Judge of the bankruptcy Court held that Section 122 of the Rock Island Transition and Employee Assistance Act could no longer be used by the ICC to authorize any carrier to continue operations following approval by the ICC of authority for the Estate to abandon operations. This order was appealed by the Interstate Commerce Commission and others, and a stay was sought in the Seventh Circuit. On November 19, 1981, the Circuit Court granted a stay, and on November 20, the ICC issued an acceptable compensation order in connection with Service Order No. 1498 which permitted the OKT's continued operation until January 31, 1982.

However, the Circuit Court dissolved the stay on December 2, 1981 and required that the OKT vacate the premises by December 31, 1981. The consequences of this action will be to deprive approximately 77 cities, towns and communities and hundreds of shippers of OKT rail service. In addition, approximately 400 OKT employees, most of whom are ex-Rock Island employees, will have to be released from service this month. The OKT has found these employees to be very conscientious and cooperative, and it is with sincere regret that in this time of recession these fine people must be rendered unemployed. Pursuant to the order of the Seventh Circuit, the OKT has posted embargoes and is shutting down operations in an orderly manner.

With such a background, it is clear that Congress must balance the constitutional rights of the Estate and its creditors with those of the public interest which shippers employees, and communities have in maintaining rail service. Even though the Estate has been relieved of any further responsibility to provide continued rail service, general principles of law clearly require that the public interest shall be taken into account, even in cases of liquidation. The shippers and communities served by the OKT have it abundantly clear that continued rail service is of vital concern to them and this concern has certainly been made known to the Trustee and to the judge of the bankruptcy court. The Trustee has taken the position that since these lines have been approved for abandonment, he is no longer required to consider the public interest.

In view of this impasse, it is evident that some mechanism, some means, must be established which could impartially balance the rights of the Estate and its creditors with the rights of the public. The bill which is currently being considered by this committee seems to be a practical way to accomplish this. Both the prospective purchaser and representatives of the Estate could, in case of a dispute as to value, present their evidence to an impartial body, the Interstate Commerce Commission, and obtain a determination of value based on transfer of full fee title without any reservation, lien, or encumbrance whatsoever, which would be the basis for the sale of the lines of railroad involved, subject to judicial review. Obviously the constitutional rights of the Estate would have to be protected. The potential purchaser and its financing sources could make a final determination as to financial feasibility.

If such legislation is to succeed in facilitating purchases of segments of bankurpt rail lines, the ICC must necessarily be given the power to establish conditions and resolve related disputes concerning the details and basis of such valuation.

I hope that this testimony will provide the Committee with facts which will assist in finding a fair resolution to this general problem, which affects many areas of the country.

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OKLAHOMA, KANSAS AND TEXAS RAILROAD COMPANY
MONTH OF OCTOBER 1981

FINAL

Form 3429
Rev. 1-78

Month of October				OPERATING RESULTS	Period Ending October 31			
1981	1980	Increase (Decrease)	%		1981	1980	Increase (Decrease)	%
				OPERATING REVENUES				
$3,128,000	$2,121,000	$1,007,000	47.5	Freight	$30,344,000			
389,570	439,201	(49,631)	11.3	Switching	3,829,957			
31,300	177,730	(146,430)	82.4	Demurrage	660,365			
1,261	2,334	(1,073)	46.0	Other	121,705			
3,550,131	2,740,265	809,866	29.6	Total	34,956,027			
				OPERATING EXPENSES				
513,781	374,406	139,375	37.2	Maintenance of Way (A) (C)	5,353,607			
59,962	52,969	6,993	13.2	Maintenance of Equipment (B)	1,226,192			
80,455	59,045	21,410	36.3	Traffic	768,869			
1,409,809	995,734	414,075	41.6	Transportation	11,980,719			
117,564	108,204	9,360	8.7	Other	1,162,837			
2,181,571	1,590,358	591,213	37.2	Total	20,492,226			
1,368,560	1,149,907	218,653	19.0	NET REVENUE FROM RAILWAY OPERATIONS	14,463,803			
				Railway Tax Accruals - Federal Income				
249,275	208,843	40,432	19.6	Railway Tax Accruals - Other	2,247,203			
249,275	208,843	40,432	19.4	Total	2,247,203			
1,119,285	941,064	178,221	18.9	RAILWAY OPERATING INCOME	12,216,600			
1,205,096	663,308	541,788	81.7	Equipment Rents - Net	9,926,164			
(2,233)	2,936	(5,669)	193.1	Joint Facility Rents - Net	(28,308)			
$ (83,078)	$ 274,820	$ (357,898)	130.2	NET RAILWAY OPERATING INCOME	$ 2,318,744			
63,566	53,858	9,708	18.0	Other Income	406,700			
45,672	101,496	(55,824)	55.0	Misc. Deductions From Income	553,948			
(65,184)	227,182	(292,366)	128.7	INCOME AVAILABLE FOR FIXED CHARGES	2,171,496			
391,271	275,503	115,768	42.0	Fixed Charges	3,895,051			
(456,455)	(48,321)	(408,134)	844.6	ORDINARY INCOME	(1,723,555)			
$ (456,455)	$ (48,321)	$ (408,134)	844.6	NET INCOME	$(1,723,555)			
			XXXXX	RATIO OF EXPENSES TO REVENUES				XXXXX
14.5	13.7	.8	XXXXX	Maintenance of Way	15.3			XXXXX
1.7	1.9	(.2)	XXXXX	Maintenance of Equipment	3.5			XXXXX
2.3	2.2	.1	XXXXX	Traffic	2.2			XXXXX
39.7	36.3	3.4	XXXXX	Transportation	34.3			XXXXX
3.3	3.9	(.6)	XXXXX	Other	3.3			XXXXX
61.5	58.0	3.5	XXXXX	OPERATING RATIO	58.6			XXXXX
33.9	24.2	9.7	XXXXX	RATIO OF EQUIPMENT RENTS TO REVENUES	28.4			XXXXX
				(A) Includes Depreciation				
				(B) Includes Depreciation				
				(C) Includes Retirements				
$ 582.17	$ 469.98	$ 112.19	23.9	Average Revenue Per Car	$ 589.88			
5,373	4,513	860	19.1	Carloads - 9% Report	51,441			

Accounting Department
Denison, Texas
November 25, 1981

NOTE: * Includes $26,875 accident accruals for damage to Foreign Line equipment.

AMENDED
Applies "only" to Railway Tax Accruals.

OKLAHOMA, KANSAS AND TEXAS RAILROAD COMPANY
MONTH OF DECEMBER 1980

FINAL

Month of December				OPERATING RESULTS	Period Ending December 31			
1980	1979	Increase (Decrease)	%		1980	1979	Increase (Decrease)	
				OPERATING REVENUES				
$2,064,783				Freight	$14,855,783			
397,917				Switching	2,693,525			
105,250				Demurrage	698,273			
6,249				Other	18,122			
2,574,199				Total	18,265,703			
				OPERATING EXPENSES				
468,004				Maintenance of Way (A) (C)	2,642,319			
89,793				Maintenance of Equipment (B)	691,207			
64,784				Traffic	393,312			
981,089				Transportation	6,760,839			
164,948				Other	826,027			
1,768,618				Total	11,313,704			
805,581				NET REVENUE FROM RAILWAY OPERATIONS	6,951,999			
				Railway Tax Accruals - Federal Income				
211,408				Railway Tax Accruals - Other	1,390,483			
211,408				Total	1,390,483			
594,173				RAILWAY OPERATING INCOME	5,561,516			
776,898				Equipment Rents - Net	5,701,504			
(30,430)				Joint Facility Rents - Net	(17,194)			
$ (152,295)				NET RAILWAY OPERATING INCOME	$ (122,794)			
46,919				Other Income	225,366			
63,918				Misc. Deductions From Income	328,400			
(169,294)				INCOME AVAILABLE FOR FIXED CHARGES	(225,828)			
371,611				Fixed Charges	1,988,631			
(540,905)				ORDINARY INCOME	(2,214,459)			
$ (540,905)				NET INCOME	$(2,214,459)			
			XXXXX	RATIO OF EXPENSES TO REVENUES				
18.2			XXXXX	Maintenance of Way	14.5			
3.5			XXXXX	Maintenance of Equipment	3.8			
2.5			XXXXX	Traffic	2.1			
38.1			XXXXX	Transportation	37.0			
6.4			XXXXX	Other	4.5			
68.7			XXXXX	OPERATING RATIO	61.9			
30.2			XXXXX	RATIO OF EQUIPMENT RENTS TO REVENUES	31.2			
				(A) Includes Depreciation				
				(B) Includes Depreciation				
				(C) Includes Retirements				
$ 532.02				Average Revenue Per Car	$ 534.67			
3,881				Carloads - 9% Report	27,785			

Accounting Department
Denison, Texas
February 3, 1981

Various Adjustments and Unusual Items Included in December 1980 Income Statement

Vacation Liability Accrual	Traffic	$ 1,354	
	Transportation	83,938	
	General	50,092	$135,384
Personal Injury Accrual Adjustment	M. of W&S	21,000 Cr.	
	M. of E.	7,000 Cr.	
	Transportation	37,010 Cr.	65,010 Cr.

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Senator KASSEBAUM. Thank you.

Since you finished last, Mr. Ziebarth, let me start with you on a question. Because it seems from the prior testimony of the trustee and the attorney for the estate, that the Achilles heel in your offer is the 34-mile segment between Dallas and Fort Worth, and it's been reported that you are not interested in the 900 other miles of this line without the Dallas-Fort Worth segment, and I would like your assessment of the situation.

Mr. ZIEBARTH. Well, basically it boils down to this. The north-south line is an agricultural feeder line. The business is sporadic. It depends on weather, it depends on market price, it depends on export orders, and you have periods of very intense, high volume business. You have to maintain a plant to handle that high volume business when it comes.

The Dallas-Fort Worth area is the most important area on the line where you have consistent commercial business, merchandise business, that goes on year-round and which is not subject to the kind of very sharp fluctuations that the agricultural business is. We have literally seen months that have been—the highs and lows in the business we've seen so far are on the magnitude of 100 percent. We've had months when we've been close to 7,000 cars, and others when it's been down in the 3,500 area.

The manufacturered business which is in the Dallas-Fort Worth area, plus the Rock and Central Oklahoma is the base we have to have to maintain the operation while we can build it up, which is a long-term proposition. We hope to do the same thing on the OKT we've done with the K-T, but that takes years.

Senator KASSEBAUM. I can appreciate that. It obviously is a very important part of your package and it is the most lucrative part of that whole line. I believe the trustee would maintain that the value of that part, along with the easement value there would be almost as much as the purchase price that you've offered for the whole line. How do you answer that?

Mr. ZIEBARTH. Well, my understanding is that that line is under a joint trackage contract that has some 30 years to run, so that whatever values as to metallics or real estate might be there would—could not be realized in any reasonable timeframe. You are basically bound by the terms of the lease.

Now, to us as a railroad operator, that's no problem because, after all, our operations, as we see it, basically do not conflict with those of the Burlington and we would plan to take the property if it could be obtained, subject to their rights. So I really—I think that is one of the basic points of difference. We see this as rail property that is encumbered for until 2011.

Senator KASSEBAUM. I might ask, does the estate wish to respond to that at this point? Do you regard it as encumbered until 2011?

Mr. GIBBONS. There are parts of it that are under agreement until 2011, as I explained to you, Senator. We terminated one of the agreements. The owner of those lease agreements is anxious to negotiate with us, has started negotiations with us and has already established a base negotiation price for the service along that segment, which is far in excess of anything that OKT is paying for us now and wants to buy it from us. I think eventually the price—I also have the cities of Fort Worth and Dallas that I'm negotiating with for the same property. There is nothing which prevents, let's say, a commuter service which the two cities want to operate from being operated on on the same line as a freight line, and these transactions are all in the offering. They are valuable to me right now.

The OKT has insisted that it is not presently valuable to me because of these leases and I dispute that. I also have many expressions of interest from communication lines, wire lines and pipelines along that area. OKT insists if they are to buy the property from me I'm not to have any rights with respect to that. That's been one of the bases of our disputes with respect to valuation here. I cannot subscribe to what the gentleman has just testified to.

Mr. MANOS. One additional salient factor, Senator Kassebaum. The trustee offered to negotiate with the OKT a grant of trackage rights to OKT as a substitute for acquisition over the property by the OKT. They refused to even consider trackage rights which, in the opinion of the trustee would serve their public interest obligations. I believe that's an extremely crucial point in connection with the rebuttal to the gentleman's testimony.

Senator KASSEBAUM. Thank you.

Mr. Ziebarth, do you have any comment on the trackage rights?

Mr. ZIEBARTH. The trackage rights situation is not a possible one for us because of the relationship with the Burlington. We do have to be the fee title owner in control switching and dispatching in that corridor. This is rather a complex subject, but basically we are a very small carrier relative to the size of the Burlington. And a situation where we had only trackage rights, and this has to do with some fairly complicated tariff matters as well, simply is not a possible one to us.

With respect to the general subject of possible nonrail uses of property, I guess I would have two observations. One, the way we have been able to build up the K-T over the last decade has been to use every scrap of income that we could obtain from any source and pour that into the railroad, and we think that's exactly what we have to do in the case of the OKT.

The other point, I suppose, is that the developments with respect to pipelines, communication lines and so on are not new. After all, railroad right of way has been recognized for the last 50 years as being a convenient channel. I guess Western Union started to rent the railroad right of ways back in the 1860's. Nonetheless, the material values have been relatively small to date. But should they develop, and I do have to regard them as speculative, I think they should properly be devoted to the railroad operation.

Senator KASSEBAUM. Thank you. This isn't really the forum to try to arbitrate this particular thorny aspect of this offer, but obviously how that segment of the line is resolved is a key to the sale of the whole line. I would like to ask all of the panel what your thoughts are on the suggestion by the trustee and the attorney that condemnation proceedings would be a viable alternative to S. 1879? Mr. Smith?

Mr. SMITH. Senator Kassebaum, I'm not an attorney and I would prefer not to even attempt to answer that.

Mr. ZIEBARTH. I would have to pass. Just offhand, I don't see how the through character of the line could be preserved under condemnation, but I'm not an attorney so I really can't comment authoritatively. Anybody wish to——

Mr. FAY. Oklahoma has looked at the issue as a possible option. However, the complexities of doing it under State law are such that it's not a clear, viable option at this stage. It might be an ultimate last resort, but one not entered into willingly.

Senator KASSEBAUM. You felt it was not an option when you looked into it?

Mr. FAY. That's right.

Senator KASSEBAUM. There is one condemnation proceeding ongoing now, is that right, with the transit authority in Chicago?

Mr. GIBBONS. That's correct, ma'am.

Senator KASSEBAUM. That's the only one?

Mr. GIBBONS. That's the only one that is pending, yes.

Senator KASSEBAUM. What is the status of that?

Mr. GIBBONS. Right now we have a meeting next week with the authority, with the attorneys, all the technicians involved to see if we can't settle the matter. It is pending for trial before the court. As to what the trial date is, I don't recall. There are others that were about to be brought, as I think I explained to you, Senator, were resolved before the proceedings. One was resolved after the proceeding was brought.

Senator KASSEBAUM. I don't know that it would accelerate the process, as we are trying to do in S. 1879, but it is an interesting idea. I am afraid that as Mr. Fay says, there are so many different State interpretations of condemnation proceedings that it may become extremely complicated over any large line, for instance, the 900 miles of the OKT.

Mr. ZIEBARTH. Could I correct that mileage figure to be very specific? The offer that we made was for 690 miles of fee property, of which roughly 130 are on the Sun Belt line operated by the MKT, plus an additional roughly 200 miles of leased property, the line from Harrington to Topeka to St. Joe. Also, 20 miles or so of trackage rights to Salina, a mile or so around Wichita, and so forth, et cetera.

Senator KASSEBAUM. I'd like to ask your thoughts, and those of Mr. Boyd and Mr. Smith, about the suggestion that S. 1879 be amended to require a 4-year commitment to operate the lines rather than a 2-year commitment, as now provided. Do you have any feeling as to how this change would affect your plans to purchase the lines?

Mr. BOYD. I feel our concern would be that there is a method by which service can be provided to shippers while the legal wrangling goes on perhaps interminably. That is where people would really get killed up in our country, if service is suspended until all of these very complicated matters are finally determined.

So any way, whether it's 2 years or 4 years as a commitment, I don't believe really that's the important thing. The important thing is some method of providing temporary services until these matters can be adjudicated while negotiations are going on in good faith.

Senator KASSEBAUM. I meant that if the purchase was upheld, and the offer was made in good faith and was upheld, then under the legislation the purchaser would be committed to operate that line for 2 years. It's been suggested that it would make sense and would represent an improvement if the commitment were made for 4 years.

Mr. **Boyd**. The contracts we're negotiating on are for 20 years.

Senator **Kassebaum**. So neither 2 nor 4 years would bother you?

Mr. **Boyd**. You are talking here, Senator, about an industry that would like to expand and double their capacity and a short-term operation really doesn't permit that because of the amount of capital invested. We have several pending proposals in our area, all of which depend upon some kind of a permanent solution. So we are trying to buy it, and the operator agrees to underwrite from track grant our obligations for a 20-year period.

Mr. **Smith**. Senator, I think probably a 4-year situation probably would be better. I do think that the trustees should take into consideration the capitalization, however, of the money that is available to the estate from purchasers such as Mr. Boyd's group, the port authority in Kansas and the OKT Rail Users Association.

I have no idea how long it would take to dismantle or scrap, if that were necessary, 700, 800, or 900 miles of railroad. But if you capitalize the $45 million that we have offered—and again, we can provide the money—over a 5-year period at 10 percent, it comes to $72,472,000. It wouldn't be hard today to lock in 10 percent money for 5 years.

I think that's something that the trustee should take into consideration. I think the need for this legislation or some legislation is here. We need it now. We're faced with a shutdown, December 31 of this year. It's extremely expensive, as we found out 18 months ago, to start up a railroad. I would urge you to do what you can to speed the legislation.

Senator **Kassebaum**. We intend to mark this up in committee on Thursday.

Mr. **Smith**. I think that would be great, Senator Kassebaum.

Senator **Kassebaum**. Thank you very much. I appreciate your testimony.

The next witness is J. R. Snyder. Mr. Snyder is chairman of the legislative committee of the Railway Labor Executives' Association.

It is a pleasure to welcome you as a witness.

STATEMENT OF JAMES R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY WILLIAM G. MAHONEY, GENERAL COUNSEL

Mr. **Snyder**. Thank you, Madam Chairman.

In accordance with the instructions we have received from the committee, with your permission, we would like to insert the complete testimony in the record.

Senator **Kassebaum**. We appreciate it.

Mr. **Snyder**. And in accordance with further instructions, we wish to briefly summarize our statement.

My name is James R. Snyder. I am chairman of the legislative committee of the Railway Labor Executives' Association and national legislative director of the United Transportation Union.

I am accompanied by William G. Mahoney, counsel to the Railway Labor Executives' Association.

I present this statement on behalf of the Railway Labor Executives' Association in support of the enactment of S. 1879. I appear before you today to express the support of the membership of the RLEA to this legislation because it seeks to preserve essential rail service to a significant segment of this Nation's economic base.

The trustee's quite natural desire to accumulate as much money as possible for his investors may lead, if indeed it has not already led, to his seeking a price for each line well beyond what, by objective standards, would be considered fair and reasonable. The trustee claims that he no longer operates a railroad and that therefore he is not governed in his actions by the public interest considerations normally applicable to those who do operate railroads. We disagree with that conclusion although the reorganization court does agree with it.

The RLEA believes that one who can destroy rail service in an area because he will not operate it, and the price he places on it is too high for anyone else to purchase or operate it, does affect the public interest and affects it significantly. If the price is beyond a fair and reasonable level, it would be contrary to the public interest.

The only way a determination can be made which will protect the public interest as well as the private interests of those who now own the Rock Island estate through investment in discounted bonds or whatever, is to give the ICC that responsibility, subject to the review safeguards contained in the bill.

Other witnesses testifying before you today have detailed the present situation with regard to various lines formerly operated by the Rock Island and now being operated by other railroads or abandoned or discontinued, and I will not take the time of this committee to repeat that information. I would only add that the number of former Rock Island employees hired by other railroads has fallen far short of the expectations and estimates of the Federal Railroad Administration. This circumstance, combined with the court's injunction against the operation of the limited employee protection provisions of the Rock Island Act, has visited extreme and continuing hardship upon thousands of employees and their families.

There are two other matters I would like to address regarding the contents of S. 1879, and they concern section 4.

First, section 4 would amend section 17(b) of the Milwaukee Act by adding a new paragraph 3 to that subsection. This new paragraph would permit "financially responsible persons," as distinguished from "purchasing carriers" to which at least one court has held section 17(b) to be limited, to purchase lines formerly operated by the Rock Island. This new paragraph departs from the other provisions of section 17 in failing to provide protection for the employees affected by such sale. Section 17(b) relates to sales which may be authorized by a reorganization court and provides for the protection of employees affected thereby.

A similar provision is set forth as the last sentence of section 17(a) regarding the abandonment authority of a reorganization court. It is respectfully submitted that employees are harmed no less by sales to financially responsible persons that they are by sales to carriers or by abandonments and should receive the same protection in each instance.

Attached to appendix A of my statement is a suggested amendment to S. 1879 which would provide equal protection for employees in each of the three types of transactions provided for in section 17 should S. 1879 be enacted.

Second, and for reasons I have set forth in detail in my prepared testimony, we respectfully suggest that certain additional modifications should be made in section 17(b) and 122(a) if S. 1879 is to achieve its purpose. The reasons for the changes recommended in appendices B and C attached to my prepared statement arise from interpretations that have been placed on section 17 and section 122 by the courts and the ICC.

There is one additional point that should be raised before this committee in its consideration of amendments to the Rock Island Act.

As a result of court orders staying the operation of the provisions of the Rock Island Transition and Employee Assistance Act insofar as they were designed to aid employees, the requirements of section 108(b) have been rendered moot and should now be amended.

That section requires each employee who is entitled to receive assistance under title I of the act to file a statement with the Railroad Retirement Board by April 1, 1981, indicating whether that employee wishes to receive the protections of the act or any employee benefits otherwise available under the Bankruptcy Act or other applicable contract. Because the courts stayed the operation of the act on the grounds that the employee protection provisions were unconstitutional, no employee became "eligible to receive assistance under" the act. The date of April 1, 1981, is, of course, long past and has been rendered meaningless as a performance date under the act.

In appendix C attached to my testimony is a suggested amendment which would cure that defect.

We would be happy to work with you and your staff on each of our suggested amendments as you believe appropriate. For the information of the committee and the record, the issue of the constitutionality of title I of the act was argued before the Supreme Court of the United States on December 2, 1981. We hope for a decision from the court by the end of February.

Thank you for this opportunity to present the views of the RLEA and particularly the Rock Island employees on S. 1879.

Senator, just a bottom line on this. I want to personally thank you for all your assistance in the past. As you very well know, in 1979 we had legislation we thought would take care of the employees' protection. Unfortunately, the trustees and the courts decided differently. So for the second time in the Dereg Act last year, we thought this would be rendered. Unfortunately it was not. So, as I pointed out here, we are before the Supreme Court of the United States.

All during this period I know that as I had received many, many calls in the Rock Island territory—particularly from Kansas, but I have received them from all other States the Rock Island has operated on, not only from my employees, members we represent, but from the wives, the families, who were so much concerned, in which you have shared that concern, and we appreciate that.

Senator **Kassebaum**. Thank you very much, Mr. Snyder. I appreciate that and appreciate your suggestions for amendments to this legislation that you feel would be beneficial.

Do you have any estimate on how many Rock Island employees in Kansas, would be affected, for instance, by the potential agreement of Mid-States Port Authority with the Rock Island?

Mr. **Snyder**. Not right off the top of my head.

Senator **Kassebaum**. Do you have it broken down for the OKT, on how many employees would be affected there?

Mr. **Snyder**. I think we could come up with this corrected figure for you. We do have a breakdown over here, but this includes the Milwaukee employees on the Rock Island—filing employment on the Rock Island as of March 1980.

We would be glad to furnish you and the committee with that information.

Senator **Kassebaum**. I just didn't know if you had any figures that would indicate the potential employment or loss of employment as it is affected in Kansas by the Rock Island properties.

Mr. **Snyder**. We have been very disappointed in the performance in providing protection in the Rock Island employees, and the performance of some of the other railroads of hiring Rock Island employees. When the agreement was reached, it was understood perhaps maybe as much as 50 percent of the Rock Island employees could be taken care of. That's not true. I think the latest figures we have on that were overall about 24 percent; 24 to 25 percent of former Rock Island employees have received employment from other railroads. It's much better on the Milwaukee, but that's the latest figures that I have. We have, as I say, a breakdown here, but this does include the Milwaukee.

We can give you a separation on that.

Senator **Kassebaum**. I would appreciate that.

[The following information was subsequently received for the record:]

December 18, 1981.

Hon. Nancy L. Kassebaum,
Committee on Commerce, Science, and Transportation,
Washington, D.C.

Dear Senator Kassebaum: You will recall during my testimony December 8, 1981, involving S. 1879, legislation on the Rock Island, you made inquiry concerning the number of employees in the State of Kansas who would be unemployed as a result of the Rock Island situation.

I have contacted the Railroad Retirement Board which has an up-to-date listing on Rock Island employees who would be drawing unemployment benefits and using this measure, I would advise a total of 929 former employees of the Rock Island are presently unemployed. This figure is current to the month of November 1981.

I appreciate very much your cooperation and your interest shown.

With kindest personal regards, I remain

Respectfully yours,

J. R. Snyder,
National Legislative Director.

HIGHSAW & MAHONEY, P.C.
Washington, D.C., February 22, 1982.

Hon. NANCY L. KASSEBAUM,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR KASSEBAUM: This letter is to supplement the one sent to you by James R. Snyder, National Legislative Director of the United Transportation Union, on December 18, 1981, regarding former Rock Island employees in Kansas.

Our office was informed by an official of the Missouri-Kansas-Texas Railroad that on December 31, 1981, the Oklahoma-Kansas-Texas Railroad shut down operations over the trackage between Dallas and St. Joseph, Missouri. That action resulted in a loss of jobs for 400–450 former Rock Island employees. In addition, in mid-February of this year, the Burlington Northern terminated operations between Phillipsburg and Caruso, Kansas, which led to a loss of jobs for approximately 20 former Rock Island employees. Kyle Railroad currently is operating over that line; however, Kyle has not agreed to give preference in hiring to former Rock Island workers.

If we can provide you with any further assistance, please let us know.

Sincerely,

JOHN O'B. CLARKE, Jr.

Senator **KASSEBAUM**. Do you think again it's a question of uncertainty for the employees, as well as the creditors and the shippers?

I know when I have visited areas of Kansas that are most severely affected, there are a number of communities that have a large part of their population in that community involved in some way with the Rock Island Railroad, and it has caused a great deal of worry about what lies ahead in the future, either for employment with the railroad or future employment somewhere else. I think again it's a question of trying to establish some framework that can give us all guidance on what will be possible in the future. As we approach markup I certainly will be happy to consider your amendments and your suggestions. I appreciate your testimony today.

Mr. **SNYDER**. Mr. Mahoney will be available for any legal standpoint on it, or any other point that we can help you and your staff with. I want to thank you very much.

[The statement follows:]

STATEMENT OF JAMES R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is James R. Snyder. I am Chairman of the Legislative Committee of the Railway Labor Executives' Association and the National Legislative Director of the United Transportation Union. I am accompanied by William G. Mahoney, counsel to the Railway Labor Executives' Association. I present this statement on behalf of the Railway Labor Executives' Association in support of the enactment of S. 1879.

The membership of the Railway Labor Executives' Association consists of the chief executive officers of twenty standard national and international railway labor organizations. They are:

American Railway & Airway Supervisors Association, Division of BRAC; American Train Dispatchers Association; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employes; Brotherhood of Railroad Signalmen; Brotherhood of Railway Carmen of the United States and Canada; Brotherhood of Railway & Airline Clerks; Hotel & Restaurant Employees & Bartenders International Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers and Blacksmiths; International Brotherhood of Electrical Workers; International Brotherhood of Firemen and Oilers; International Longshoremen's Association; International Organization of Masters, Mates and Pilots of America; National Marine Engineers' Beneficial Association; Railroad Yardmasters of America; Sheet Metal Workers International Assn.; Seafarers International Union of North America; United Transportation Union; Transport Workers Union of America.

I appear before you today to express the support of the membership of RLEA to legislation which seeks to preserve essential rail service to a significant segment of this nation's economic base.

The Trustee's quite natural desire to accumulate as much money as possible for his investors may lead, if indeed it has not already led, to his seeking a price for each line well beyond what, by objective standards, would be considered fair and reasonable. The Trustee claims that he no longer operates a railroad and that therefore he is not governed in his actions by the public interest considerations normally applicable to those who do operate railroads. We disagree with that conclusion although the Reorganization Court does agree with it.

The RLEA believes that one who can destroy rail service in an area because he will not operate it, and the price he places on it is too high for anyone else to purchase or operate it, does affect the public interest and affects it significantly. If the price is beyond a fair and reasonable level it would be contrary to the public interest.

The only way a determination can be made which will protect the public interest as well as the private interests of those who now own the Rock Island Estate through investment in discounted bonds or whatever, is to give the I.C.C. that responsibility subject to the review safeguards contained in the bill.

The interests of the railroad employees of the nation are bound to the interests of those who would use the services of the lines involved; the more business on the railroads, the more secure existing railroad jobs across the nation as more job opportunities are created.

Other witnesses testifying before you today have detailed the present situation with regard to various lines formerly operated by the Rock Island and now being operated by other railroads or abandoned or discontinued and I will not take the time of this Committee to repeat that information. I would only add that the number of former Rock Island employees who would be hired by other railroads has fallen far short of the expectations and estimates of the Federal Railroad Administration. This circumstance, combined with the courts' injunction against the operation of the limited employee protection provisions of the Rock Island Act, has visited extreme and continuing hardship upon thousands of employees and their families.

There are two other matters I would like to address regarding the contents of S. 1879 and they concern Section 4.

First, Section 4 would amend Section 17(b) of the Milwaukee Act by adding a new paragraph (3) to that subsection. This new paragraph would permit "financially responsible persons", as distinguished from "purchasing carriers" to which at least one court has held Section 17(b) to be limited, to purchase lines formerly operated by the Rock Island. This new paragraph departs from the other provisions of Section 17 in failing to provide protection for the employees affected by such sale. Section 17(b) relates to sales which may be authorized by a Reorganization Court and provides in the last sentence of paragraph (b)(1) as follows:

"In authorizing any such sale or transfer, the court shall provide a fair arrangement at least as protective of the interests of employees as that required under section 11347 of title 49, United States Code."

A similar provision is set forth as the last sentence of Section 17(a) regarding the abandonment authority of a Reorganization Court. It is respectfully submitted that employees are harmed no less by sales to financially responsible persons than they are by sales to "carriers" or by abandonments and should receive the same protection in each instance. Attached as Appendix A to my statement is a suggested amendment to S. 1879 which would provide equal protection for employees in each of the three types of transactions provided for in Section 17 should S. 1879 be enacted.

Second, and for reasons I will discuss in a moment, we respectfully suggest that certain additional modifications should be made in Section 17(b) and 122(a) if S. 1879 is to achieve its purpose. We ask that the words "to be used in continued rail operations" be stricken from section 17(b)(1) and replaced with the words "which was used in interstate commerce in January, 1980, to an existing carrier or other financially responsible person".

Present paragraph (3) which is proposed as paragraph (4) in S. 1879 should be amended by inserting as the opening clause of the second sentence thereof the words, "Notwithstanding section 10901 of title 49 United States Code, the court may permit the acquiring entity" and by striking the existing words, "The court may permit the purchasing carrier" as well as substituting "acquiring entity" for "purchasing carrier" in the last clause of the sentence.

The final amendment on this point would insert after "any rail carrier" in the first sentence of section 122(a) of the Rock Island Act, the words "or financially responsible person". Our suggestions for appropriate amendatory language are attached as Appendix B and as subsection (3) to Section 5 of S. 1879 in attached Appendix C.

The reasons for the changes recommended in Appendices B and C arise from interpretations that have been placed on Section 17 and Section 122 by the courts and the I.C.C.

The U.S. Court of Appeals for the Seventh Circuit and the U.S. District Court for the District of New Jersey which was recently affirmed by the Third Circuit Court of Appeals have held that Sections 5(b) and 17(b) of the Milwaukee Act do not apply to the sales of abandoned lines to newly formed carriers because as the I.C.C. has stated: "A line that has been abandoned is no longer a line of railroad as that term is used in section 17(b) of the MRRA. (Chicago, Rock Island & Pac. R.—Abandonment—Entire System, 363 I.C.C. 150, 178 (1980)). Section 4(2) of S. 1879 uses the term of art "line of a bankrupt railroad", and consequently, unless the existing Section 17(b) is also modified to eliminate the narrow construction which the courts have given to it, this new legislation may not apply to lines of railroad which have been authorized to be abandoned but which are still capable of providing essential services through willing purchasers.

RLEA, as explained above, proposes that Section 17(b)(1) be modified to make it clear that it applies to the sale or transfer of any line that was used in rail operations, even though its abandonment may have been authorized. So long as the road bed and track are still in place or capable of being restored to operating condition, there is no reason to exclude the sale of that line from the expedited procedures of both Section 17(b) as it now reads and as S. 1879 proposes to amend it. Also, by adding that the subsection applies to the sale to an existing carrier or to another financially responsible person, the exclusion of newly formed carriers from coverage under its expedited procedures is eliminated.

With regard to the proposed amendment to Section 122(a) of the Rock Island Act, this bill leaves a very large gap in the I.C.C.'s ability to authorize temporary authorities to operate over abandoned or non-operating bankrupt carrier lines. Section 17(b)(3) of the Milwaukee Act presently gives the court the authority to permit a "purchasing carrier" to perform interim operations over the rail lines to be acquired. The Seventh Circuit has recently construed a similar provision in Section 5(b)(3) of that Act as being "applicable only to existing carriers, and thus inapplicable to non-carriers." In re Chicago, Milwaukee, St. Paul & Pac. R., 7th Cir. Nos. 80-1347, et al., decided August 17, 1981, slip op. at 43 (emphasis in original). Since the I.C.C. has concluded that a newly formed railroad is not a rail carrier until it receives a certificate of public convenience and necessity under 49 U.S.C. § 10901, Section 17(b)(3) cannot be used to authorize interim operations. Moreover, since Section 122(a) of the Rock Island Act uses that term "rail carrier" in describing what type of entity the I.C.C. may authorize to perform interim operations, the I.C.C. may well be viewed as being without authority to authorize interim operations by financially responsible persons who have not yet received a certificate under 49 U.S.C. § 10901. RLEA has proposed certain language which modifies both Section 17(b)(3) and Section 122(a) to assure that both provisions cover non-carriers as well as existing railroads.

There is one additional point that should be raised before this Committee in its consideration of amendments to the Rock Island Act.

As a result of court orders staying the operation of the provisions of the Rock Island Transition and Employee Assistance Act insofar as they were designed to aid employees, the requirements of Section 108(b) have been rendered moot and should now be amended.

That section requires each employee who is entitled to receive assistance under Title I of the Act to file a statement with the Railroad Retirement Board by April 1, 1981, indicating whether that employee wishes to receive the protections of the Act or any employee benefits otherwise available under the Bankruptcy Act or other applicable contract. Because the courts stayed the operation of the Act on the grounds that the employee protection provisions were unconstitutional, no employee became "eligible to receive assistance under" the Act. The date of April 1, 1981, is, of course, long past and has been rendered meaningless as a performance date under the Act.

That date was considered a reasonable date at the time of enactment on May 30, 1980, because it was designed to allow each employee almost a year after the Act became effective and ten months after the I.C.C. imposed a protective arrangement and the court had implemented it, in which to exercise his election.

In order to carry out the original intent of Congress in the matter of employee elections under the Act, we respectfully suggest to this Committee that it consider striking the date "April 1, 1981", as it appears in Section 108(b) of the Act and insert instead the words "300 days after the court has entered its order implementing the employee protective arrangement pursuant to section 106(c)." In Appendix C attached to my testimony a suggested amendment which would accomplish this result is set forth as a new subsection (2) to Section 5 of S. 1879.

For the information of the Committee and for the record, the issue of the constitutionality of Title I of the Act was argued before the Supreme Court of the United

States on December 2, 1981. We hope for a decision from the Court by the end of February.

Thank you for this opportunity to present the views of the RLEA on S. 1879.

Appendix A—Suggested Amendment to S. 1879

At page 5, line 19, insert the following sentence after "lines.":

"In approving any such sale, the court shall provide a fair arrangement at least as protective of the interests of employees as that required under section 11347 of Title 49, United States Code."

Appendix B—Suggested Amendment to S. 1879

(1) Page 3, line 13, change "(2)" to "(3)" and insert the following new subsections:

"(2) In the first sentence of section 17(b)(1) strike "to be used in continued rail operations" and insert "which was used in interstate commerce in January, 1980, to an existing carrier or other financially responsible person";

(2) Strike from second sentence of newly renumbered subsection "17(b)(4)" the words "The court may permit the purchasing carrier" and insert, "Notwithstanding section 10901 of title 49 United States Code, the court may permit the acquiring entity"; and, strike "purchasing carrier" from the last clause of the second sentence and insert "acquiring entity".

Appendix C—Suggested Amendment to S. 1879

At page 6, amend Section 5 by adding subsections at the end thereof as follows:

"(2) In section 108(b) strike 'April 1, 1981,' and insert '300 days after the court has entered its order implementing the employee protective arrangement pursuant to section 106(c).'

"(3) In Section 122(a) insert after "any rail carrier" in the first sentence thereof, the words "or other financially responsible person".

Senator KASSEBAUM. Thank you, Mr. Snyder.

[Whereupon, at 1 p.m., the hearing was adjourned.]

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